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EUROPEAN SOCIAL CHARTER

14th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF BULGARIA

- Articles 1, 18, 20, 24 and 25 for the period 01/01/2011-31/12/2014
- Complementary information on Articles 6§1 and 22 (Conclusions 2014)

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CYCLE 2016

FOURTEENTH NATIONAL REPORT

For the period January 1st 2011 — December 31st 2014
Submitted to the Council of Europe by the Government of the Republic of Bulgaria in accordance with article C of the European Social Charter (revised)
regarding the measures for the implementation of the adopted provisions thereof.

Introduction

This report has been prepared in consultation and cooperation with the competent institutions.

Pursuant to Article C of ESC (rev.), the report has been coordinated with the nationally representative organisations of employers and trade unions.

The Bulgarian national currency is the Bulgarian Lev (BGN) which is pegged to the Euro at a rate of 1.95583 BGN = 1 EUR (0.511292 EUR = 1 BGN).

The Bulgarian government remains available for any further questions or clarifications that might arise in the process of examining this report.

Contents:

Article 1 – The Right to work
Paragraph 1 - Policy of full employment

Questions of the European Committee for Social Rights (ECSR)

Finally, it notes from another source that barriers to labour market participation in Bulgaria partly reflect the insufficient provision of properly targeted and tailored active labour market policies. The quality of public services in the areas of activation, job search assistance and retraining is low as is public spending. Active measures coverage is also limited with only 12% of jobseekers participating in activation measures1. The Committee asks in this respect if there are plans to strengthen the capacity to monitor and evaluate programme results with the aim of a better policy design in the employment field.

The 2015 National Action Plan for Employment contains measures to improve the services provided by the Employment Agency (EA) and to develop an effective monitoring and evaluation system.

The plan includes conducting periodic surveys (including electronically) of the degree of satisfaction of employers and jobseekers and inviting proposals for the adaptation of services according to their needs as part of the design process of each service. On the basis of the results of the studies the further development of new policies and employment services is outlined.

In a recovering labour market more efficient allocation of available resources is among the priorities of the Employment Agency (EA). In 2015, a number of activities were launched to improve the effectiveness of the EA, including of the territorial divisions of the Agency, through the development of a system for monitoring the performance in the provision of employment services and the implementation of active labour market policy at regional and local level.

In October 2014, during a working visit to EA by representatives of the European Commission, a review of the system of indicators was made to improve the quality of services. On the basis of recommendations received actions to improve quality in customer service are taken.

A key measure in 2015 to improve targeting of employment policy in terms of target groups in the labour market is updating the methodology for monitoring and evaluation of active labour market programs and measures. A joint working group of representatives of the Ministry of Labour and Social Policy (MLSP) and EA has been designated to that effect. The methodology is planned to include a new module for planning of employment policy.

The Methodology for monitoring and evaluation of active labour market programs and measures a common basis, a common approach for analysis and

evaluation of the active policy to ensure uniformity and reliability of management conclusions and recommendations. It defines the general framework for conducting ongoing monitoring and evaluation of the implementation of active policy.

The two most widely used techniques for the evaluation of employment programs and measures are ongoing monitoring of key indicators and assessment of the impact of application in terms of finding a job after participation in employment and professional qualification measures.

Subject to monitoring and assessment pursuant to the Methodology are programs and measures financed from the state budget with funds for active policy and included in the National Action Plan for Employment - the main employment policy tool which identifies annually the projects, programs and measures realized, the types of incentives and their amounts - both for employers and participants in subsidized employment.

The full cycle of monitoring and evaluation of existing programs includes:

1. Preliminary assessment;
2. Ongoing monitoring of the implementation of programs and measures;
3. Annual analysis and evaluation of implementation and of the impact of implementation of programs and measures.

In order to take action to improve the targeting and increase the efficiency of implementation of various labour market initiatives, the so-called interim evaluation is carried out on a regular basis. The main objective of this evaluation is to provide interim additional information to serve as a basis for taking decisions to change, extend or terminate the implementation of certain measures and / or programs.

The updated Employment Strategy of the Republic of Bulgaria 2013-2020 provides for a gross assessment at least once every three years of the impact of the programs and measures for employment and training funded by the state budget as well as net-evaluation at least once in 5 years.

Important for assessing and monitoring the results of measures and policies of employment and in particular youth employment is the Coordinating Council for implementation and monitoring of the National Implementation Plan for European Youth Guarantee (NIPEYG). One of its main tasks is associated with monitoring the implementation of the Plan. In this regard, there are specific tasks defined in the Rules of Procedure of the Coordinating Council for implementation and monitoring of NIPEYG, aimed to ensure regular monitoring of implementation with a view to timely action in case of failure or retardation, as well as for better targeting of actions and initiatives. The specific activities for monitoring of NIPEYG include:

- examining the quarterly progress reports on the implementation of the Plan containing information on the spending on the individual initiatives and results achieved;

- planning ongoing and follow-up evaluations of the Plan and individual measures thereof;

- requesting information form institutions and organisations in relation to Council's activity;

- making proposals and discussing the results of implementation of activities for capacity strengthening of stakeholders, mutual learning, partnership building, exchange of experience and best practices.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

According to the previous reporting system the position was provided to the Secretariat as written information.

Article 1, Paragraph 2

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

1. Prohibition of discrimination in employment

The Committee takes note of the different situations where a difference in treatment on grounds of age is possible within the limits set by Section 7 of the Protection against Discrimination Act. It is particularly important that such difference in treatment is an essential and determinant professional requirement owing to the nature of the work or the conditions under which it is performed, that the aim is legitimate and that the requirement does not exceed that which is necessary to accomplish the work. The Committee asks how the courts interpret these limits and what exactly constitutes age discrimination.

According to the hypothesis of Article 7, Paragraph 1, Item 2 of the Protection against Discrimination Act (PADA), the minimum and maximum age set for access to employment does not constitute discrimination where, by reason of the nature of a particular occupation or activity, or of the conditions it is carried out in, such a characteristic constitutes an essential and determining occupational requirement, the aim is legitimate and the requirement does not exceed what is necessary to accomplish it;

Therefore, the fixing of maximum age for access to employment does not constitute discrimination if the following requirements are **cumulatively** met**:** the aim is legitimate and the means to accomplish it do not exceed the necessary, i.e. they are proportionate.

In the hypothesis of Article 7, Paragraph 1, Item 5 of PADA, the fixing of requirements for minimum age, professional experience or length of service for recruitment or for access to certain advantages linked to employment does not constitute discrimination, provided that it is objectively justified by a legitimate aim and the means to accomplish it do not exceed the necessary

In the hypothesis of Article 7, Paragraph 1, Item 6 of PADA, the fixing of maximum age requirements for recruitment is linked to the training requirements of the post in question, or the need for a reasonable period of employment before retirement. The requirements specified obviously concern recruitment under employment contract with its inherent limitations called for by the implementation of a job having specific

requirements which demands specialised training and the setting of maximum age is associated with the necessary period of training and the obligation of the employee to work long enough for the employer which should not be which should not be prematurely terminated due to reaching the age of retirement.

Enclosed are judicial decisions in age discrimination cases.

In its previous conclusion (Conclusions 2008), the Committee asked that the relationship between the Labour Code (which, under Article 225, provides for compensation of up to a maximum of six months wages in the event of unfair dismissal) and the Protection against Discrimination Act (which, under Section 71§1, does not mention any statutory limit to the amount of compensation for which a victim of discrimination may apply) be clarified and that it be shown, particularly on the basis of legal decisions, that there is no predetermined upper limit to the compensation payable in cases of discrimination which would preclude damages from making good the loss suffered and from being sufficiently dissuasive. In reply, the report draws attention to Article 225§1 of the Labour Code, which fixes a limit for compensation of up to a maximum of six months wages, and states that there are no court decisions on such matters.

Consequently, the Committee considers that the situation is not in conformity with the Charter.

Judicially, the victim of discrimination can claim compensation for non-pecuniary damages which is **determined *ex aequo et bono* by the court.** /Under **Article 52 of the Obligations and Contracts Act,** compensation for non-pecuniary damages shall be determined *ex aequo et bono* by the court/.

The term **"equity"** as a moral and ethical concept includes "the ratio between the act and retribution, the dignity of the people and its reward" - motives in this regard are set out in civil case № 2800/2005, IV Civil Division of the Supreme Court of Cassation (SCC).

Enclosed are judicial decisions in this regard.

The Committee asks that the next report describe the Agency for Persons with Disabilities in detail (in particular the financial resources available and the number of persons it employs) and provide a more comprehensive summary of its activities.

The Agency for People with Disabilities (APD) performs the following functions:

1. Creates and maintains a database for people with disabilities;
2. Registers persons carrying out activities to provide aids, devices and facilities for people with disabilities and medical devices in the lists of Article 35d, Paragraph 1 of the Law on Integration of People with Disabilities;
3. Registers specialized enterprises and cooperatives of people with disabilities;
4. Supervises provision of assistive devices, appliances and equipment for people with disabilities and medical devices in the lists of Article 35a, Paragraph 1 of the Law on Integration of People with Disabilities;
5. Keeps a register of specialized enterprises and cooperatives of people with disabilities
6. Participates and gives advices in the preparation of draft legislation related to people with disabilities;

7. Develops programs and finances projects that stimulate economic initiative for people with disabilities and ownership in the interests of people with disabilities;
8. Develops programs and finances projects for rehabilitation, integration and building an accessible environment for people with disabilities;
9. Finances employer projects creating jobs for long-term unemployed persons with permanent disabilities in active age;
10. Finances projects presented by NGOs for and to people with disabilities;
11. Finances projects for access to and adaptation of cultural, historic and sports sites and facilities of international, national and regional importance, presented by state, municipal, non-governmental (for-profit and not-for-profit) organisations;
12. Reimburses social security payments made by employers in ordinary environment;
13. Reimburses social security payments made by employers in specialised environment;
14. Pays targeted benefits to people with disabilities;
15. Prepares annual summary reports and analyzes of activity integration of people with disabilities;
16. Other activities defined in the Act or by the Council of Ministers.

The activities of APD in 2014 led to achievement of the following results:

Targeted benefits for assistants provided to 6032 individuals with intellectual impairments; targeted benefits for sign language services to 4734 individuals; targeted benefits for assistants to 9283 blind people and targeted benefits for assistants to 17964 persons with reduced mobility. Rehabilitation and social integration undertakings financed.

4012 people with disabilities included in rehabilitation and social integration undertakings. By financing projects for provision of accessible built environment to cultural, historic and sports sites and facilities 14 such sites have been adapted.

Funding projects for start-up and development of independent business of people with disabilities in 2014 led to creation of 23 new jobs for persons with disabilities who have started own business and funding projects of employers / appointing bodies for ensuring, adapting and equipping workplaces for people with permanent disabilities led to creation of 60 new jobs for persons with permanent disabilities who work in the ordinary environment and in specialized work environment. Funding projects with social considerations of specialised enterprises and cooperatives of people with disabilities in 2014 led to ensured and/or improved health and safety at work in specialised work environment of 783 workplaces for people with disabilities. Through APD's activity, 12% of the specialised enterprises and cooperatives of people with disabilities have been technologically renovated. Conducted were 427 inspections of traders in medical articles and assistive devices, appliances and equipment for people with disabilities.

Funds and economic resources according to the 2014 APD Activities Report:

The Agency for People with Disabilities is a second level spending unit to the Ministry of Labour and Social Policy. According to Article 49 of the Integration of People with Disabilities Act (IPDA), the activities of the Agency are financed from the state budget, the municipal budget, national and international programmes, donations by local and foreign natural and legal persons, other sources.

Information about 2014:

Revenue

Own revenues of the Agency over the reporting period - BGN 5524, including:

- Fines, sanctions, penalties – BGN 3760,
- Other non-tax revenues – BGN 1764.

Expenditure

Agency's funds are spent in accordance with a budget approved by the Minister of Labour and Social Policy. Funds spent on departmental expenditure amounted to BGN 88 431 and those spent on administrative expenditure amounted to BGN 5 027 455 and included costs as follows:

- **§ 42-00 Current transfers and benefits to households – BGN 1 634 827 (Uniform Budget Classification, 2014)**

  Contracts concluded with the Union of the Blind in Bulgaria (UBB), the Union of the Deaf in Bulgaria (UDB), the Union of Disabled People in Bulgaria (UDPB) and the Bulgarian Association for Persons with Intellectual Disabilities (BAPID) for payment of targeted benefits are reported under this item.

  Cash expenditures for targeted benefits by union over the period are:

  - **Union of the Blind in Bulgaria – BGN 464 600**
  - **Union of the Deaf in Bulgaria – BGN 211 516**
  - **Union of Disabled People in Bulgaria – BGN 863 893**
  - **Bulgarian Association for Persons with Intellectual Disabilities – BGN 301 475**

- **§ 43-00 Subsidies to non-financial enterprises**

  Expenditure at 31.12.2014 amount to BGN 2 897 982

  Funds required for the implementation of Agency's so-called Active Policies the operating title whereof "Employment and Social Integration of People with Disabilities" is

  2014 spendings:

  §§ 43-01 Running costs – BGN 1 279 105

Reimbursement of 50% of the social security payments made by employers pursuant to Article 26 and Article 40 of the Law on Integration of People with Disabilities and the Ordinance on the procedure for reimbursement of social security payments made by employers and the specialised enterprises, work and treatment establishments and cooperatives of people with disabilities which are members of the nationally representative organisations of and for people with disabilities.

Over the review period, reimbursements at BGN 719 116 were made to 79 specialised enterprises and cooperatives of people with disabilities and one ordinary employer.

Funding projects for start-up of own business of people with disabilities pursuant to Article 31 of LIPD.

Over the review period, payments in an amount of BGN 348 057 were made on one 2013 contract and on twenty-one 2014 contracts, and BGN 300 were reimbursed on one 2013 contract.

Funding projects to provide accessible environment pursuant to Article 8, Item 6 of LIPD.

Payments on fourteen 2014 contracts – total 410 703 BGN.

Funding projects of employers in ordinary work environment pursuant to Article 25 of LIPD.

Thirteen 2014 contracts worth total 144 556 BGN were funded over the period.

§§ 43-09 Other subsidies and payments – BGN 1 618 877

Funding of specialised enterprises and cooperatives of people with disabilities is reported in this item.

Payments over the period were made on one 2013 contract and on fifteen 2014 contracts for economic orientation, in an amount of BGN 1 017 233, as well as on 17 contracts with social orientation, in an amount of BGN 601 644.

§45-00 Subsidies to not-for-profit organisations

At 31.12.2014, expenditure amounts to BGN 254 987 on seventeen 2014 contracts.

Funding of projects of non-governmental organisations for vocational training and requalification, rehabilitation and social integration of people with disabilities is reported in this item.

The limit approved by MLSP and spent at 31.12.2014 amounts to BGN 5 722 370,72.

Spending under HRD OP is reported in the form for reporting of accounts for EU funds.

Expenditure are as follows:

§ 02 – expenditure in an amount of BGN 4711 – remuneration to two persons under the "Start in the Administration" program

§ 05 – expenditure in an amount of BGN 853 – social security payments by the employer for the above two individuals.

§ 10 – expenditure in an amount of BGN 395 048, as follows:

BGN 351 828 for external services are reported on project No. BG051PO001-6.2.06 "Creating an integrated system for management of the overall process of implementation of the government policy for work with people with disabilities in Bulgaria" under priority axis 6.

BGN 43 220 for external services are reported on project No. BG051PO001-7.0.02-0009-C001 "Sheltered employment – experience, innovations and opportunities" under priority axis 7.

The previous report presents the National Programme for Employment and Vocational training of People with Permanent Disabilities. The Committee asks that the next report present information on the implementation of this programme.

The Committee also takes note of the Interest-free Loans Programme aimed at helping people with disabilities enhance their competitiveness and cultivate an entrepreneurial mind-set and thereby start up and develop their own business.

The Committee asks that the next report present a summary of the activities carried out in the context of these programmes, particularly the specific activities, the number of persons concerned and the funds allocated.

The National Programme for Training and Employment of People with Permanent Disabilities is focused on improving the employability and ensuring employment to unemployed persons with permanent disabilities or people in active age who have successfully completed a drug abuse treatment course, registered in the labour

offices, as a precondition for overcoming their social isolation and for their full integration in the society. The programme is implemented on the principles of equality of people, their full participation in the labour process and their right to more decent life. People whose capacity to work is reduced at 71%+, war-disabled persons, people with sensory disabilities, people with mental disabilities are given priority for inclusion in the programme. Employers open jobs under the programme for a period of 24 months. Priority is given to employers who have signed contracts for financing under the Law for Integration of People with Disabilities for provision of access to the work places and for adaptation and/or equipment of work places for people with disabilities.

The following activities were implemented under the programme:

- Motivation training – for acquiring skills and for successful behaviour in the labour market;
- Training for acquiring and improving core competences;
- Training for acquiring professional qualification;
- Provision of employment for a period of 36 months and social security for unemployed persons with permanent disabilities.

The objective of National Programme "Interest-free loans for people with disabilities" is to ensure employment, equality and to create conditions for full life and employability of people with disabilities. It subsidises the interest of borrowers with disabilities under MLSP's project "Micro-credit Guarantee Fund" (MCGF). The programme is focused on building entrepreneurial attitude and supporting the socioeconomic integration of people with disabilities, creating conditions for borrowers under the project „Micro-credit Guarantee Fund" to developing their own business, encouraging self-employment and the creation of new permanent jobs.

Eligible for reimbursement of interest are borrowers under the project "Micro-credit Guarantee Fund":

- Natural persons;
- Sole traders, as well as borrowers – legal persons where a person with disabilities is a partner (cooperative member). Where the borrowers are legal persons, a portion of the interest proportionate to the share of the person with disability is reimbursed.

The activities implemented under the programme include reimbursement at up to 10% of the interest on loans of people with disabilities, borrowers under the project "Micro-credit Guarantee Fund".

In 2012, the National Programme for Training and Employment of People with Permanent Disabilities contributed for provision of employment to 2076 people with permanent disabilities, including 413 new entrants in the programme. 1748 persons worked on average per month. Spendings amount to BGN 6 683 026.

The Employment Agency implements different encouraging measures for employment and training, regulated in the Employment Promotion Act (EPA). They are focused on specific target groups in the labour market – unemployed young people, long-term unemployed, people with disabilities, unemployed women, people aged 50+, etc. In 2012, employment under Article 36, Paragraph 2 of the EPA was provided to 196 young people with permanent disabilities, including 114 new entrants. 112 people

worked on average per month (including the persons employed in the previous year). Spendings amount to BGN 248 471.

Under the measure for hiring unemployed persons with permanent disabilities, including war-disabled persons for temporary, seasonal or hourly jobs (Article 52, Paragraph 1 of EPA), employment was provided in 2012 to 1076 persons with permanent disabilities, including 629 new entrants. 554 persons worked on average per month (including persons employed in the previous year). Spendings amount to BGN 1 453 670.

In 2012, under the programme "Interest-free loans for people with disabilities" interest was reimbursement to 69 people with disabilities who were borrowers under MLSP's MCGF project. Spendings amount to BGN 74 990.

The implementation of the scheme "Improving the quality of services for citizens and the business provided by the Employment Agency with focus on the vulnerable groups in the labour market" continues in 2012. The objective of the scheme is to improve the quality of the mediation services offered by EA by ensuring an individual approach oriented on one part to the specific needs of the vulnerable groups in the labour market and on the other part to key employers in the different regions of the country. Envisaged was hiring of 350 labour mediators in the Labour Office Directorates to provide services and support to vulnerable groups – people with disabilities, members of the ethnic minorities, permanent unemployed, and organising 84 regional labour exchanges and 12 specialised labour exchanges with focus on different target groups – people with disabilities, Roma people, unemployed young people, etc..

In 2012 the Agency for People with Disabilities spent on active policies BGN 2 826 177 (including BGN 343 962 in financing of projects for accessible environment). Payments for projects of employers amount to BGN 100 490 (the amount includes BGN 29 084 in expenditure to finance 4 projects of the Social Assistance Directorates) for hiring 23 unemployed persons with permanent disabilities in ordinary work environment.

For the purposes of effective monitoring of the implementation of contractual obligations under projects, 91 inspections of ordinary employers and 120 inspections of specialised enterprises were carried out. Specialised enterprises, work and treatment establishments and cooperatives of people with disabilities which are members of the nationally representative organisations of and for people with disabilities were reimbursed 50 per cent of the social security payments made for the employees included in the establishment plan, in an amount of BGN 800 173. For funding of specialized enterprises and cooperatives of people with disabilities were paid BGN 1 578 320. This measure is aimed at ensuring healthy and safe working conditions, technological upgrading of facilities and equipment, provision of social contacts, which in turn leads to increased labour productivity. Technologically renovated were 17 specialized enterprises and cooperatives and 41 new jobs were opened. Health and safety at works was ensured for 640 persons with disabilities.

In 2012, the funding program for projects for self-employment of
people with disabilities launched in 2006 continued to enjoy great interest and to broaden its scope in the areas of business activity of people with disabilities. At 31.12.2012, financing in the amount of BGN 295 096 was granted to 28 projects for start-up and developing own business of persons with long-term disabilities. 132 inspections were carried out in order to monitor the contractual obligations of projects.

In 2012, newly registered were 13 specialized enterprises. The amount which APD allocated to active policies included funds in the amount of BGN 343 962 to finance 10 projects to provide accessible environment for people with disabilities. Funds

in the amount of BGN 292 610 were paid to finance 19 projects of non-profit organizations for activities related to the rehabilitation and social integration of people with disabilities. 4500 persons with disabilities were integrated through the programme. For targeted aid for attendants of people with disabilities, visually impaired persons and persons with intellectual disabilities and mental disorders, and for the use of sign language services by persons with impaired hearing were paid BGN 1 645 782 for 38 762 persons.

The first European Fair of social enterprises and cooperatives of people with disabilities was held from March 29 to April 1, 2012, in Bulgaria, Plovdiv. It brought together social enterprises and cooperatives from Bulgaria, Poland, Romania, Czech Republic, Slovakia, Germany, Italy, France and Spain. The event was opened personally by Minister Totyu Mladenov who highlighted the role of the Operational Programme "Human Resources Development" as a tool to support policies for active inclusion of people with disabilities. The first European Fair of social enterprises and cooperatives of people with disabilities builds on the 10-year tradition of MLSP in conducting national exhibitions of specialized enterprises. The focus of the initiative is the development of social entrepreneurship, exchange of experience and good practices, increasing the employment opportunities for people with disabilities and establishing business contacts.

In 2013, in the National Programme for Employment and Training of People with Permanent Disabilities were included 1592 persons with permanent disabilities. 1818 persons worked on average per month. Spendings amounted to BGN 7 878 881. During the reporting period under Article 36, Paragraph 2 of the Law on Employment Promotion in employment were included 81 young people with disabilities. On average per month worked 86 persons (including persons who were employed during the previous year). Spending amounted to BGN 168 246. Under measures for hiring unemployed persons with permanent disabilities, including war-disabled persons (article 52, Paragraph 1 of the EPA) for hiring unemployed persons with permanent disabilities temporary, seasonal or part-time work (Article 52, paragraph 2 of the EPA), in 2013 in employment were included a total of 1295 persons with disabilities. On average per month worked 832 persons (including persons who were employed during the previous year). Spending amounted to BGN 2 353493 2 353.

To promote the development of own business by persons with disabilities, in 2013 **Programme "Interest-free loans for people with disabilities"** was implemented. Interest was reimbursed to 40 persons with disabilities - borrowers under Project "MCGF" of the Ministry of Labour and Social Policy (MLSP). Spending amounted to BGN 33 369

In line with the strategic and operational objective of MLSP, in 2013 the Agency for People with Disabilities continued to implement the program "Integration of Persons with Disabilities". For active policies in 2013 APD spent BGN 3 761 560 (including BGN 301 130 for funding of projects for accessible environment). To finance projects of common employers were disbursed funds in the amount of BGN 157 977 (topped up was the financing of 4 contracts from 2012 and 12 contracts from 2013) for adaptation and equipment of 25 work places for people with permanent disabilities in ordinary work environment. Eighty specialized enterprises, labour and treatment facilities and cooperatives of people with disabilities, members of the nationally representative organizations of and for people with disabilities were reimbursed 50 per cent of the paid social security contributions for workers on the establishment plan, in an amount of BGN 975 315. For funding of specialized enterprises and cooperatives of people with disabilities were paid BGN 1 469 225 (including carryover balance of BGN 79 078 from

2012) to finance 31 projects. This measure is aimed at ensuring healthy and safe working conditions, technological renovation of the facilities, ensuring social contacts, which in turn leads to increased labour productivity. Technologically renovated were 13 specialized enterprises and cooperatives and 35 new jobs were opened. Healthy and safe working conditions were created for 598 persons with permanent disabilities.

At 31.12.2013, under the program for funding self-employment projects people with disabilities are financed 32 projects for start-up and development of own business by permanently disabled persons, in the amount of BGN 541 222 (including carryover balance of BGN 28 953 from 2012). 385 checks were carried out in order to monitor the contractual obligations for projects. In 2013, newly registered were 7 specialized companies. To finance 21 projects of non-profit organizations, for activities related to the rehabilitation and social integration of people with disabilities were paid BGN 316 691 (including carryover balance of BGN 2754 from 2012). The number of covered direct and indirect beneficiaries of these projects is approximately 5000 persons with disabilities. For targeted aid to attendants of people with disabilities, visually impaired persons and persons with intellectual disabilities and mental disorders and for the use of sign language services by persons with impaired hearing were paid BGN 1 628 457 36 646.

The implementation of the operation "Chance for All" was completed in 2013. The operation was aimed at supporting the social inclusion of people with disabilities through support for specialized enterprises and cooperatives of people with disabilities to provide training for the acquisition or improvement of vocational training and employment to people with disabilities. The scheme focuses on training for acquiring or improving the professional qualifications and / or acquiring key competencies by people with disabilities and ensuring their subsequent employment within one year. The measures were aimed at both newly recruited persons and at employees in these organizations, thereby ensuring increased competitiveness and stabilized market position. The scheme was split into two components in accordance with the legislation which regulates state aid. Through the projects training was provided to 109 persons. The number of those who started working in the social economy sector is 29 and subsequent employment is ensured for all of them.

In 2014 continued the implementation of the **National Programme for Employment and Training of People with Permanent Disabilities.** In 2014, the Programme provided employment to 155 persons with permanent disabilities. In employment were 1762 persons on average per month. Spending amounted to BGN 7 941 527. Under Article 36, Paragraph 2 of the Employment Promotion Act in employment were included 34 young people with permanent disabilities. In employment were 53 persons on average per month (including persons in employment during the previous year). Spending amounted to BGN 117 484.

Under the measures for employment of unemployed persons permanent disabilities, including war-disabled persons (Article 52, Paragraph 1 of EPA) and for employment of unemployed persons with permanent disabilities in seasonal or part-time jobs (Article 52, Paragraph 2 of EPA), in 2014 in employment were included a total of 201 persons with permanent disabilities. In employment were 442 persons on average per month (including persons in employment during the previous year). Spending amounted to BGN 1 317 803.

In 2014, under the **Programme "Interest-free Loans for People with Disabilities"** interest was reimbursed to 18 people with disabilities – borrowers under MLSP's Project "MCGF". Spending amounted to BGN 14 277. According to information from the Ministry of Economy, under the measure "Improving the

competitiveness of specialised enterprises and cooperatives of people with disabilities by implementing a procedure for the award of grants for investments in modern technologies and equipment", by the end of 2014 were created total 30 new jobs and were implemented 16 investment projects in the supported enterprises and cooperatives of people with disabilities.

In 2014, APD spend for active policies for people with disabilities BGN 3 507 226 (including BGN 410 703 to finance projects for accessible environment). To finance projects of ordinary employers were spent BGN 155 786 (including BGN 91 174 in transfer to budget and municipal enterprises) for employment of 27 unemployed persons in ordinary work environment. Specialised enterprises and cooperatives of people with disabilities which are members of nationally representative organisations of and for people with disabilities were reimbursed 50 per cent of the social security contributions for the employees included in the establishment plan, in an amount of BGN 719 116. For funding projects of specialised enterprises and cooperatives of people with disabilities were paid BGN 1 618 877 (including carryover balance of BGN 3115 from 2013). This measure is aimed at provision of health and safety at work, technological renovation of the facilities, ensuring social contracts, which in turn increases labour productivity. Technologically renovated were 16 specialised enterprises and cooperatives and 33 new jobs were created. At 31.12.2014, funding in an amount of BGN 347757 was provided to 23 projects for start-up and development of own business by people with permanent disabilities.

In the reporting period the Union of Disabled People in Bulgaria (UDPB) kept on providing information and consultations to employers about existing programmes and projects and about preference regulations. UDPB continued its partnership with the Bulgarian Chamber of Commerce and Industry (BCCI), the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the National Union of Employers for encouraging employers to hire people with disabilities and for preserving the jobs for people with disabilities. UDPB experts were involved in the preparation of opinions, in discussions and working groups on changes in the regulations concerning the use of preferences in the pursuit of business by persons with disabilities and by employers of such persons. UDPB associates and experts continued to collect information and draft proposals for creating to overcome the negative impact of the built environment, transport, adapted jobs, education, information on employment opportunities. UDPB continued to organize public awareness building about the professional opportunities for people with disabilities through exhibitions, local, national and international expos, as well as through the media.

In 2014 UDPB members participated again in the Fair of social enterprises and cooperatives of people with disabilities in Plovdiv and in the already traditional exhibitions and bazaar on the occasion of December 3, Christmas, Easter, etc., organised by regional structures of the UDPB in the country. 52 employers and 402 workers (employees), unemployed persons and people with disabilities willing to start their own business were fully informed about the rights of people with disabilities at work in ordinary environment and about the protection from dismissal, about the exemptions foreseen in the Corporate Income Tax Act, the Local Taxes and Charges Act, the Obligations and Contracts Act and the Personal Income Tax Act. Commercial activity carried on in the markets according to current regulations of the municipal authorities is one of the common ways for people with disabilities to conduct their own business. UDPB experts and associates continued to assist persons with disabilities, explaining the conditions of employment of shopping sites in municipal markets and conducting monitoring for possible adverse changes in existing regulations and for strict compliance

by the municipal authorities. In 2014, 153 persons with disabilities received explanations on conditions for the rental of shopping sites in municipal markets and were also assisted in meeting the requirements.

In 2014, the National Consumer Cooperative of the Blind in Bulgaria provided four new jobs under the **National Programme for employment and training of people with permanent disabilities**, 53 new jobs were created by supporting existing specialized enterprises and cooperatives of people with disabilities and social enterprises. Three training seminars for improving the qualifications of professionals working with people with disabilities were organized and held, involving 133 people.

The Committee notes the 2012-2020 National Strategy for the Integration of Roma and the Action plan for its implementation, published in November 2011. It asks that the next report make a mid-term review of this strategy to combat discrimination in the employment of Roma.

In 2012, in training and employment were included 21 663 persons of Roma origin. Employment was provided 11 478 people through participation in various projects, programs and incentives, as well as in the primary labour market. The highest number of people received employment under Operational Programme "Human Resources Development" (OP HRD) - 4095. Under the National Programme "From Social Assistance to Employment" employment was provided to 3529 persons. On the primary market started work 3122 persons of Roma origin, and under encouragement measures employment was provided to 253 persons.

To promote entrepreneurship, 25 persons were included in motivational training, and 101 persons - in training for starting up and managing own business, including 100 persons under the HRD OP. In activities to increase employability were included 10 059 persons, of which: in individual and group forms guidance and motivation for active behaviour on the labour market - 6004 persons; in literacy training - 1080 persons, all under the project "New chance for success" under the HRD OP, implemented by the Ministry of Education and Science (MES); training for vocational qualifications and key competences - 2975 persons of which 2947 under HRD OP.

In connection with the promotion of social and civil dialogue, 134 meetings were held between labour offices and Roma NGOs in 2012 to support the employment of unemployed individuals of Roma origin.

Targeted schemes aimed at disadvantaged groups in the labour market are implemented with support from HRD OP:

The scheme "Take your life in your own hands" (2010-2013) provides motivation and support for vulnerable group members, training and apprenticeship with an employer for a period of three months. As of 12.21.2012, the scheme included 2849 persons, of which 2431 - in training and 418 - in employment.

The scheme "Improving the quality of services provided by the Employment Agency services for citizens and businesses with a focus on vulnerable groups in the labour market" (2010-2013) includes the selection and appointment in the labour offices 350 labour mediators to work with representatives of disadvantaged groups in the labour market; 250 of them were appointed in August 2011. Under the scheme is implemented training of labour office employees to work with members of vulnerable groups. 12 specialized job fairs, aimed at unemployed Roma, people with disabilities and other disadvantaged groups in the labour market were held till the end of 2013.

In order to support employment and training of unemployed persons from ethnic minorities, long-term unemployed and persons with low qualifications and skills

shortages, in 2012 a new scheme was launched under HRD OP - "Support for Employment" (2012- 2014). It enabled training of unemployed persons under the guidance of a mentor on key competences necessary to adapt to the conditions at the new workplace. Subsidized employment was provided for unemployed persons for a period of 6 to 12 months. In 2012, 976 unemployed people from ethnic minorities were included in employment under the scheme.

At 31.12.2013, employment was provided to 14 670 persons of Roma origin, against a plan of 10 500, or 140% performance, through their involvement in various programs, projects, encouraging measures for employment and in the primary labour market. The highest number of persons started work under the National Programme "From Social Assistance to Employment" - 8110, in the primary labour market started work 3979 unemployed, under the HRD OP - 1543 persons and under encouraging measures – 309 people.

For promoting entrepreneurship of registered unemployed Roma, in 2013 seven unemployed persons of Roma origin, including three under HRD OP, were included in the training for starting and managing own business.

For promoting social and civil dialogue, in support of the employment of Roma, 104 meetings were held in 2013 between state labour offices (LOD) and Roma NGOs on the ground to search for their assistance and cooperation in the implementation of various activities on the plan of Employment Agency.

The successful implementation of the **National Programme "Activation of inactive persons"** continued in 2013. Mediators conduct information campaigns, individual and group meetings with inactive persons. Meetings are held with social partners, NGOs and employers' organizations for nominations of program beneficiaries.

At the end of 2013, in 63 labour offices in the country work 76 mediators and 12 labour offices have two mediators each. Of all mediators 51 are women and 20 are university graduates.

As a result of the implementation of the program and the activities of the mediators, at the end of 2013 LOD registered 12 993 inactive and discouraged people. Of these, 3551 persons have been realized, including 3434 persons having a job, and 117 persons involved in various trainings.

The scheme „Support for the Institutional Building of the Institutions in the Labour Market, Social Inclusion and Healthcare" (Project "Start in the Administration") under HRD OP provides apprenticeships for unemployed young people with low chances for realization in the labour market, including unemployed young people with disabilities, unemployed youths from ethnic groups, single parents, parents of young children and others. MLSP, the Ministry of Health (MoH) and second-level spending units at the Minister of Labour and Social Policy and the Minister of Health hire unemployed young people with higher education, but without experience, for 9-month internships in units of specialized administration. Total of 235 trainees are hired at the position "junior expert" in the administrations of the Ministry of Health and MLSP.

The Employment Agency organises for an eight year in a row **specialized job fairs targeting the Roma community**. The purpose of the fairs is to support the employment of unemployed persons of Roma origin by facilitating their access to information about job vacancies and by providing direct contact and negotiation with employers. In the period 2006-2013 were held 40 job fairs as a result of which 3680 persons started work.

Two specialized fairs for members of the Roma community conducted were held in 2013 - in Plovdiv and in Chirpan. They were attended by 340 jobseekers and 16 employers who announced 209 job vacancies. The number of persons who started work

is 208, of which 187 persons were registered in LOD.

The following measures were approved pursuant to Human Resources Development Operational Programme:

Operation "Improving the quality of services provided by the Employment Agency for citizens and businesses with a focus on vulnerable groups in the labour market under HRD OP", where specific beneficiary is the Employment Agency, aims to increase the quality of intermediation services offered by the Employment Agency by providing individual approach cantered on the one hand around the specific needs of vulnerable groups in the labour market and on the other hand around the key employers in different regions of the country. This objective is achieved through the training of the Employment Agency staff aimed at improving servicing of individuals from vulnerable groups and hiring labour mediators in the Labour Office directorates who are familiar with the specific needs of the different target groups and will provide them with access to services tailored to their abilities and needs. In the "Regional Employment Service" directorates and in the central administration of the Employment Agency are hired qualified individuals with the necessary education to maintain regular contacts and to provide advice to the largest employers of the region. In the framework of the operation are organized regional and specialized job fairs, which enable direct contact between employers and jobseekers.

In connection with the implementation of the National Action Plan for the National Roma Integration Strategy of the Republic of Bulgaria (2012-2020) and the international initiative Decade of Roma Inclusion 2005-2015, the plan for 2014 envisaged involvement of 17 550 unemployed people of Roma origin registered in the Labour Office Directorates (LOD) in various activities to increase their competitiveness in the labour market, provision of employment and promotion of their entrepreneurial culture. The plan is performed at 160%, covering 28 0594 persons. Compared to 2013 when 24 608 unemployed Roma were covered by the various activities there is an increase of 21%.

The activities planned were implemented with funds from the budget of the Employment Agency allocated for active labour market policies and with funds from HRD OP. The different activities and indicators are part of the Action Plan of the Employment Agency for the respective years.

The number of persons included enhancing their employability and qualification in 2014 was 14 937 against a plan of 6100, as follows:

- In individual and group forms for vocational guidance and motivation for active behaviour on the labour market - 13 862 persons;

- In training for acquiring professional qualification, key competences and literacy - 1075 persons of which 522 under the HRD OP.

Employment was provided to 13 108 persons against a plan of 11 300, by involving them in various programs, projects, encouraging measures for employment in the primary labour market. The highest number of persons started work under programs and projects for employment and training - 6994, of which 4333 under NP "From Social Assistance to Employment" and 1677 under HRD OP projects. In the primary labour market employment was provided to 6032 persons and 82 unemployed persons were employed in encouraging measures under EPA.

For promotion of entrepreneurship, starting and managing own business, 14 persons, against a plan of 150, were included in motivation and training activities, 13 in motivational courses, and one person - in training to start and manage own business. Non-performance on this indicator of the plan is due mainly to low motivation, initiative and financial opportunities of the unemployed, as well as to organizational and other

reasons.

In connection with the National Plan for implementing the European Youth Guarantee 2014 2020, in 2014 unemployed young Roma aged up to 24 were involved in various activities as follows:

- In motivation training, professional qualifications and key competences - 216 persons;
- In internships and apprenticeships - 2 persons;
- In employment, under encouraging measures, programs, OP HRD and primary labour market - 2202 persons.

For promotion of social and civil dialogue, in support of the employment of Roma, in 2014 LOD held 151 meetings with Roma leaders and organizations on the ground, against a plan of 140.

Under the scheme "Improving the quality of services provided by the Employment Agency services for citizens and businesses with a focus on vulnerable groups in the labour market" in the labour offices were appointed labour mediators to work with representatives of disadvantaged groups in the labour market. In 2014, 57 mediators worked in 52 labour offices, in 5 offices worked 2 mediators each.

The implementation of the National Programme "Activation of inactive persons" began in 2008. It will run until the end of 2017, in connection with the proven effective operation of Roma mediators. It aims at activating and including in the labour market inactive and discouraged persons, most of whom are members of the Roma community. To achieve this aim, LOD recruited unemployed Roma to work as "labour brokers - Roma mediators".

Roma mediators serve job seekers in the LOD and implement the specific activity and objective of the program, namely, motivation of inactive and discouraged persons of Roma origin to register and use the mediation services of LOD for employment and training. In this connection, the mediators conduct information campaigns, individual and group meetings with inactive and discouraged persons on the ground, in neighbourhoods and villages served by LOD, with compact Roma population. They hold meetings with social partners, representatives of NGOs and others.

As a result of the operation of the program and the activities of the mediators, at the end of the year 10 923 inactive and discouraged people registered as jobseeker. Of these, 2167 have a job, and 333 persons are involved in various trainings. Funds for implementation of program activities in 2015 amounted to BGN 1 278 639.

In 2014, the Employment Agency held four specialized job fairs targeting the Roma community - in Straldzha, Pazardzhik, Chirpan and in Stolipinovo urban district of Plovdiv. They were by attended 438 jobseekers, 34 employers announced 313 job vacancies. The number of persons who started working is 299, including 265 registered in the LOD.

Registered unemployed persons in the Labour Office who are representatives of the Roma community are included in all other Employment Agency activities aimed at job seekers – programs, projects and encouraging measures focused on provision of employment to long-term unemployed, people with disabilities, youths and others. In 2014 the activities of Operational Programme "Human Resources Development" under the schemes of priority 1 /*Promoting the creation of new jobs and development of an inclusive labour market*/ covered 1134 individuals who identified themselves as Roma, over 90% whereof were involved in activities under the scheme "Support for employment."

The grant scheme BG051PO001-1.1.11 "Supported employment" was actively implemented in 2014. It covered 16 258 persons, of whom 1049 identified themselves as

Roma. The scheme aims at supporting employment for a period of 6 to 12 months and training of unemployed persons from the ethnic minorities, long-term unemployed and people with low qualifications and skills shortages. It provides training for the unemployed under the guidance of a mentor in key competencies necessary to adapt to the conditions at the new workplace. In September 2014 the budget of the operation was increased to BGN 183 044 541 which made it one of the largest operations within the HRD OP.

The grant scheme BG051PO001-1.1.12 "First job" was also actively implemented in 2014. The purpose of the operation is to provide employment for young unemployed up to 29 years by incentivising employers to hire them. For the period up to 31.12.2014 the project achieved the following: included in training are 3365 against main indicator value of 2330 (performance at 144%). Out of the 3319 young people who successfully completed the training, 3138 are included in employment against an indicator value of 2100 (performance at 149%). The share of Roma included in the scheme is 5%.

Grant scheme BG051PO001-1.1.13 "New Job". The operation aims to encourage employers to hire young unemployed up to 29 years by providing support for investment costs and labour costs associated with creating new jobs for the target group. It enables provisions of vocational training and / or training in key competencies of the employed youth depending on the needs of the employer. In 2014, the scheme activities covered nearly 2500 young people of whom only 31 are Roma, representing a lower percentage than the average for the priority axis.

Grant scheme BG051PO001-1/4/5/6.0.01 "Integra" aims to contribute to improving the quality of life and to the long-term integration of the most marginalized communities through an integrated approach. Under the scheme, beneficiaries are the municipalities of Vidin, Dupnitsa and Devnya. Eligible activities are grouped into the following areas - "Access to employment", "Access to education", "Social Inclusion" and "Measures for permanent desegregation". During the reporting period, 150 persons were activated under the scheme to get included in the labour market, 400 households received individual counselling, individual assessments were prepared for 875 persons, 140 persons started work.

Regional training and employment programmes with financing from the state budget - money spent on them in 2014 amounted to BGN 4 866 005. The programmes are designed specifically for youths under 29, with a subset under 24, including: unemployed over 50 years of age; unemployed with low qualification or qualification for which there is no demand in the labour market qualification and lack of key competencies, including unemployed with low education (including Roma); disabled people; inactive people willing to work, including discouraged people. They provide employment to the persons included in the program for a period not less than six months.

"Social protection" Fund is operational at MLSP with the aim to provide financial support for projects related to social inclusion and improving the quality of life of social groups at risk by providing a new type of social services in the community; improving the living conditions of people at risk; organizing and conducting cultural, sporting and other events aimed at social inclusion of vulnerable groups of the population, etc. Since the beginning of 2014 there has been an upward trend in the number of projects submitted to and financed by "Social protection" Fund for organizing events which are aimed primarily at ethnic communities. In 2014, the number of supported projects / events is 8 against 4 in 2013 and 2 in 2012.

MLSP is the Managing Authority of Operational Programme "Human Resources Development" 2014-2020. HRD OP funds interventions aimed at integration in the

labour market, improving access to education and training, and measures supporting the social inclusion of vulnerable groups.

Operational Programme "Human Resources Development" 2014-2020 sets out the assistance of the European Social Fund to achieve smart, sustainable and inclusive growth in several key areas: labour market (incl. youth employment, education and training, combating unemployment) , social inclusion (incl. Roma integration, de-institutionalization and development of modern social services and social economy) and modernization of public policies. 31% of the budget of the program are designed to reduce the high risk of poverty and social exclusion and are targeted at people with disabilities, at ensuring higher quality of life for children and of marginalized communities such as the Roma. Nearly 86 million BGN will be used for modernization of the public policies for social inclusion, health, non-discrimination, equal opportunities and working conditions.

In the new programming period the program contributes to the socio-economic integration of the Roma community, using the following approaches:

- Territorial approach

A mainstream and targeted approach will be used mainly within the priority axis 1 "Improving access to employment and job quality," Axis 2 "Reducing poverty and promoting social inclusion" and Axis 4 "Transnational cooperation". Under the Investment priority 1: "Socio-economic integration of marginalized communities such as the Roma", Priority Axis 2, support will be provided for measures aimed at persons living in areas with low population density, rural and isolated areas, parts of settlements where there is a concentration of problems creating a risk of poverty, social exclusion and marginalization (high unemployment, low income, limited access to public services, territorial segregation, territorial isolation, etc.).

- Integrated approach

In the new programming period, in connection with the integration of marginalized communities, support for integrated measures will continuer through a coordination mechanism between the two funds ESF and ERDF. As a starting point for planning interventions will be taken the performance of operation BG051PO001-1 / 4/5 / 6.0.01 "INTEGRA" which is supported by the ESF in 2007-2013 in the municipalities of Vidin, Devnya and Dupnitsa.

The operation is performed in coordination with the procedure BG161PO001 / 1.2-02 / 2011 "Support for providing modern social housing for vulnerable, minority and socially disadvantaged groups and other disadvantaged groups" financed by the European Regional Development Fund. The overall objective of both operations is improvement of the quality of life and long-term integration of the most marginalized communities. The integrated approach consists in combining measures to improve housing conditions with measures for employment, education, social and health services. Operations contribute to capacity building of local communities which are beneficiaries of the projects for planning and implementing initiatives to address the challenges facing the integration of marginalized groups and communities from segregated neighbourhoods and urban areas.

Furthermore, two of the programs financed by the ESF, namely HRD OP 2014-2020 and OP "Science and education for smart growth" 2014-2020 (OP SESG 2014-

2020) provide for the implementation of mechanisms for coordinated implementation of operations and where applicable - through "integrated operations". OP NOIR will complement initiatives under HRD OP by providing support to improve access to education for the target groups. Thus supporting for the most marginalized groups will include the provision of a comprehensive "social package" which attacks simultaneously all the problems impeding the integration of the target groups in the Bulgarian society.

Within the second priority axis of OP HRD 2014-2020, Investment priority 1: "Socio-economic integration of marginalized communities such as Roma", Strand "Development of local communities and overcoming negative stereotypes" will enable the implementation of various activities and campaigns to overcome negative stereotypes. Some of the examples of activities that could be implemented in this strand are: community activities to change practices that have a negative impact on social inclusion, support to involve target groups in the process of development and implementation of national and local policies, initiatives overcoming the negative stereotypes; initiatives to promote the cultural identity of ethnic communities, including in the field of traditional activities and talents (arts and crafts), etc.

2. Prohibition of forced labour

Prison work

The Committee asks that the next report include updated information on this issue.

According to Article 48, Paragraph 1 of the Constitution of the Republic of Bulgaria no one can be compelled to perform forced labour. This applies to all people, including those serving a custodial sentence. Bulgaria continues to strictly respect the fundamental conventions of the International Labour Organisation (ILO) concerning forced labour which it has ratified - Convention № 29 on forced or compulsory labour (1930) and Convention № 105 on the abolition of forced labour (1957).

The Bulgarian side pursues a policy of encouraging prisoners to work without the latter being forced to carry out the job. The Bulgarian legislation still contains a provision that in calculating the sentence two working days are counted as three days of imprisonment (Article 41, Paragraph 3 of the Penal Code). Prisoners work against adequate remuneration, which is also another type of incentive.

To date, the types of work which prisoners can do are:

- paid
- unpaid – /Article 80, Paragraph 1 of the Execution of Punishments and Detention in Custody Act (EPDCA)/
- overtime work – it is within the frames permissible for other workers/employees under the labour legislation and is permitted by the Director General of Directorate General "Execution of Punishments" (DGEP). This work is paid. Additional remuneration is received.

Type of unpaid work:

1. Voluntary unpaid work with the express written consent of the prisoner. It is outside working hours and on holidays. It is usually associated with sanitation of the prison, with public works, maintenance of cultural, historical or architectural monuments, public spaces (parks, gardens), repair of damage caused by fires and

natural disasters, or prevention of accidents and other activities. It is taken into account in calculating the duration of the sentence.

2. On-call time for maintenance of the order and hygiene of penitentiary establishments or of the territory of the prison. It is carried out according to a schedule. It is not counted as working days and is unpaid.

Paid work:

For paid work prisoners do not receive the full amount of pay received by other workers. They receive a portion which is determined by the Minister of Justice, but not less than 30 per cent of the remuneration for the work done.

If at the time of working the prisoner sustains an accident or gets occupational disease, the time that in which he does not work because of this condition is counted as working days (Article 83 EPDCA). The procedure for establishment is like the one for all workers and employees. Female prisoners have the right to holiday time in the event of pregnancy and childbirth in the amounts established for paid leave of workers and employees. The time of their holiday is counted as working days.

In the period **2012-2014,** the Execution of Punishments and Detention in Custody Act (EPDCA) was amended in respect of the work carried out by persons serving a penalty involving deprivation of freedom.

Article 79, Paragraph 5 of EPDCA was amended to include in the work permissible to be carried out on holidays service and communal activities. – Article 79, Paragraph 5 "Prisoners do not work weekends except those engaged in **the service and public utility activity** and in case of disasters and accidents in which the work carried out is considered overtime work."

Article 80 of EPDCA which regulates the carrying out of voluntary unpaid labour by prisoners was supplemented by increasing the number of activities and the places where prisoners can carry out work. The article was amended as follows:

Art. 80. (1) (amended – SG No. 103/2012) With the express written consent of prisoners the prison administration may assign to them to carry out voluntary unpaid work for:

1. (amended – SG No. 103/2012) development, maintenance and sanitation of the premises and the area of the prison facility outside the on-call maintenance of order and hygiene;
2. (amended – SG No. 103/2012) development, maintenance and preservation of cultural, historical or architectural monuments, state or municipal buildings;
3. repair of damages caused by fires and natural disasters, or to prevent accidents;
4. organizing and conducting courses for literacy, artistic, cultural, sports and other activities of prisoners who have appropriate qualifications or skills;
5. (new – SG No. 103/2012), other activities

Article 82 on the annual holiday was also amended to include in the time required to obtain an annual holiday the period during which the prisoner has stopped working due to occupational disease or accident.

"(2) (suppl. - SG. 103 of 2012) The time required to obtain an annual holiday shall include the time during which the prisoner has interrupted work due to illness, pregnancy or birth, **occupational disease or accident."**

3. Other aspects of the right to earn one's living in an occupation freely entered upon

In certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept proposed employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2 (see General Introduction to Conclusions 2008).

The Committee asks that the next report include updated information on this issue.

Unemployment is a basis for payment of unemployment compensation benefits /under short-term social security/.

According to Article 54a, Paragraph 1 of the Social Security Code (SSC), entitlement to a cash unemployment benefit is vested in persons for whom social security contributions have been paid or are due to the Unemployment Fund for at least nine months during the 15 months last preceding the termination of the social security and who:

1. are registered as unemployed in the Employment Agency;
2. are not granted old-age retirement pension or early retirement in the Republic of Bulgaria or old-age pension in another country
3. do not perform work for which they are subject to compulsory social security under Article 4 of SSC.

The above requirements have to be cumulatively met.

According to Article 20, Paragraph (2), Indent 4 of the Employment Promotion Act (as amended, SG, No. 26/2008), the registration of individuals as unemployed is terminated if they refuse to accepts **the suitable work** they have been offered and/or to get included in measures and programmes for employment and adult training under this act, as well as in programmes and projects financed from European and other international funds.

Given that **"suitable work"** is sought for the unemployed person, the above provision is not restriction of the freedom of choice in terms of work.

In the meaning of the act **"suitable work"** is, for a period of up to 18 months from the date of individual's registration in the Labour Office Directorate, the work that corresponds to the education, qualification and health status of the individual, where such work is in the same settlement or up to 30 km away from it, provided that there is appropriate public transport. After that period "appropriate work" is the work that corresponds to the health status of the individual where such work is in the same settlement or up to 30 km away from it, provided that there is appropriate public transport.

According to Article 22 of the Act, employers are obligated to inform the divisions of the Employment Agency within 7 business days about any unemployed persons who have refused to accept the **suitable work** offered to them.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§2 of the Charter on the grounds that:

• **Swiss nationals and nationals of States Parties to the European Social Charter which are not members of the European Union or of the European Economic Area may not be employed in public service posts, which constitutes discrimination on grounds of nationality** (First ground of non-conformity)**;**

Position (it was presented orally during the sessions of the Governmental Committee in 2013:

It should first be noted that the text of the very conclusion contains an inaccuracy. According to the conclusion the citizens of the Swiss Confederation may not be appointed to government jobs. In fact, as mentioned in the national report, the amendment to the Civil Servants Act, the Swiss nationals may be appointed as civil servants.

The provision of Article 7, para of the Civil Servants Act in its current version states the following:

Article 7. (1) *A civil servant may be a person who:*

1. (Supplemented – SG № 43/2008) is a Bulgarian citizen, a citizen of another Member State of the European Union, of another state - party to the Agreement on the European Economic Area or the Swiss Confederation;

Until 2008, only Bulgarian citizens had the possibility to be appointed as civil servants. After the accession of Bulgaria to the EU, and in order to comply with the principles of free movement of people, governed by the law of the Union, the scope of persons who may be appointed to civil service has been extended - in addition, citizens of other Member States of the EU, of a state-party to the Agreement on the European Economic Area or the Swiss Confederation may also be appointed as civil servants.

In Republic of Bulgaria, the competent authority for the application of the Protection against Discrimination Act is the Commission for Protection against Discrimination, which has expressed an opinion on the discrepancy. The Commission refers to its Decision № 202/2012, Third Panel, by which it accepted that prevention of third-country nationals to be employed under a service contract aims to preserve the national sovereignty during the participation of the Republic Bulgaria in the single market, implementing the free movement of persons (particularly workers) across the European Union, which places the Member States in a position of reciprocity in opening their own labour markets. As seen above, equivalent rights based on international agreements are also given to citizens of Member States to the Agreement on the European Economic Area and of the Swiss Confederation. Furthermore, in the same decision, the Commission for Protection against Discrimination has motivated the justification of the requirements for citizenship by Article 45, para 4 of the TFEU, which allows the provisions on freedom of movement for workers not to apply in relation to employment in public administration, in order to protect national sovereignty.

(Note on the concepts of "nationality" and "citizenship): “National extraction” is not found among the text set out in Article 6 para 2 of the Constitution of the Republic of Bulgaria or Article 4, para 1 of the Protection against Discrimination Act, on the basis of which the limitation of rights or the establishment of privileges have been prohibited. National extraction is not provided in the principal texts of Article 8, para 3 of the Labour Code and Article 7, para 6 of the Civil Servants Act. And whilst in Article 6 of the Constitution of the Republic of Bulgaria, Article 8, para 3 of the Labour Code and Article 7, para 6 of the Civil Servants Act is used the term "nationality", the text of Article 4, para 1 of the Protection against Discrimination Act works with the protective feature "citizenship". The latter is associated with the formally established extraction of the subject to the national state. The prohibition of discrimination provided for in Article

E of the ESC on grounds of national extraction shall be interpreted in the first place given the importance of the national citizenship of the subject. Given that, the prohibition provided for in Article E of the ESC can be implicitly found in the provision of Article 6 para 2 of the Constitution of the Republic of Bulgaria, which prohibits the introduction of unequal treatment based on nationality.

According to Article 2 of the Civil Servants Act, "Civil servant" means a person who, by virtue of an administrative act on appointment, occupies a salaried tenured position in the state administration and assists a body of state power in the exercise of the powers thereof. Under Article 4 of the same Law are listed the requirements that must be respected in the performance of the civil service. The provision regulates that a civil servant shall be guided by:

1. the law and the legally conforming acts of the bodies of state power;
2. the observance and protection of the rights, legitimate interests and freedoms of citizens;
3. the interests of the State.

It should be noted that according to the Bulgarian legislation there is a difference between the employees under employment contracts and the civil service relationship. In cases of persons employed under employment contracts shall be applied the Labour Code, and for those appointed under civil service relationship shall be applied the Civil Servants Act. The legislature has provided the participation of the both groups of employees in the state apparatus.

Taking into account the relationship between the provisions of the Protection against Discrimination Act and the Civil Servants Act, in their connection with the free movement of workers within the European Union, the Commission for Protection against Discrimination accepted those third countries` nationals and stateless persons with regard to their appointment as civil servants it is objectively justified, necessary and proportionate. The Commission's decision became final.

We would like to draw attention to the Decision No. 13189/5 November 2009, delivered by the Supreme Administrative Court, it was found that the requirement for Bulgarian nationality shall not constitute unequal treatment because according to Article 7, para 1, item 1 of the Protection against Discrimination Act it shall not constitute discrimination to treat persons differently on the basis of their nationality/citizenship or of persons without citizenship where this is provided for by a law. The Court accepted that the conclusion is consistent with the adopted Article 3, para 1 of the Foreigners in the Republic of Bulgaria Act whereby foreigners shall have any and all rights and obligations under the laws of Bulgaria and all ratified international treaties to which the Republic of Bulgaria is a signatory, excepting those rights and obligations expressly requiring Bulgarian citizenship. Also the Court considered that the regulation in those laws consistent with the provisions of the Article 26, para 2 of the Constitution of the Republic of Bulgaria which lays down that any foreigner resident in the Republic of Bulgaria shall have all the rights and duties under this Constitution, with the exception of such rights and duties wherefor the Constitution and the laws require Bulgarian citizenship/nationality.

In this case unequal treatment is stipulated by law and is expressed as prohibition of appointing in the public service of foreign nationals or stateless persons. It refers to the regulation of the relationship between the public interest and the protection of fundamental labour rights of the foreign nationals, so is to set out the legal interpretation to consider whether public or private interests should be given priority, as well as to establish the scope of the mentioned prohibition for the appointment of foreign nationals.

The legislature has determined that the public interest should be protected at absolute level. (Note: The decision is final.)

Pursuant to the scope of the provisions as interpreted by the European Committee of Social Rights (ECSR) States party can ban nationals of States party from occupying jobs for reasons set out in Article G of the Charter – in this case - the protection of public interest.

Article G
Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

In view of the reasons set out, we consider that the prohibition in Art. 7, para. 1 of the Civil Servants Act falls within the exceptions stipulated in Art. G of the revised Charter.

• the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive (Second ground of non-conformity)**.**

Position (it was presented orally during the sessions of the Governmental Committee in 2013:

The text of Article 225, para 1 of the Labour Code provides for cases of unlawful dismissal where the is entitled to compensation from the employer amounting to the worker's gross labour remuneration for the period of unemployment caused by reason of the said dismissal. The Labour Code applies to all employees and it could not provide for compensation in another amount, stipulated depending on the specific reason why the dismissal is recognised as wrongful.

Essential tools for civil protection against discrimination regulated by the Protection against Discrimination Act are the claims under Article 71 of the Protection against Discrimination Act, within the jurisdiction of the ordinary courts.

The provision includes three types of claims, which in the opinion of the plaintiff may be brought individually or simultaneously. The bringing of the claim under Article 71, para 1, item 1 of the Protection against Discrimination Act is to be established the relevant discriminatory actions by an enforceable judgment. The claim under Article 71, para 1, item 2 aims to eliminate the direct consequences of discrimination and to establish by force of law an obligation to those who carried out the discrimination to cease violation, to restore the situation before the violation and to refrain from further discriminatory actions.

The claim under item 3 of Article 71, para 1 provides a possibility to injured person to seek and receive a compensation for damages caused by the violation. Compensations are subject to both material and non-material damages - affected honor, dignity, pain and sufferings. In case of compensation for damages incurred from discrimination is applying the general rule of Article 52 of the Obligations and Contracts Act that the compensation shall be determined on an equitable basis. The mandatory judicial practice accepts that the concept of "equity" is not abstract, and in determination

of fair compensation should be considered and discussed all specific circumstances that are relevant to determining the amount of compensation in order to be fair.

According to Article 71, para 1, any person who was subject to unequal treatment - discrimination may actively bring a legitimate action.

The text of Article 225, para 1 of the Labour Code and Article 71, para 1, Sections 1-3 of the Protection against Discrimination Act complement each other in cases of claims brought simultaneously, but also apply separately and independently of each other. This means that even if a compensation is awardable for the period during which the worker has been unemployed, there is no prohibition for claims under Article 71, para 1, item 1-3 of the Protection against Discrimination Act. The reason for this is that the grounds for awarding compensations are different. The compensation under Article 225, para 1 is awarded to the worker because he/she was unemployed for a certain period of time **due to any kind** of unlawful dismissal, while the compensation under Article 71, para 1 of the Protection against Discrimination Act is awarded for acts of discrimination, **not only in the workplace but in all cases of discrimination actions.** That type of compensation has no upper limit (Art. 71, para 1).

Article 1, Paragraph 3
Paragraph 3 - Free placement services

Questions of the ECSR

The Committee asks how the improvements in the provision of labour market services by labour offices has been measured.

It notes in this respect that another source[1] states that public employment services in Bulgaria are ineffective and underfunded. Referring to a recent report ("Evaluation of the net effect of ALMPs in Bulgaria") showing that more individualised and better-quality services, as well as better infrastructure of labour offices, could support more effectively the unemployed in finding a job, the same source points out to the need of modernising public employment services to enhance their capacity in matching skill profiles with labour market demand. The Committee invites the Government to comment on these observations.

Ministry of Labour and Social Policy (MLSP) and the Employment Agency (EA) monitor the effectiveness of the services provided on the labour market. Surveys regarding the quality of the services provided and the number of persons who benefited from them are carried out. Beneficiaries can share impressions and opinions about the quality of services, make recommendations and proposals to the Management of the Employment Agency during on-site visits or on the phone to the Information and Service Centre in the Central Administration of the Employment Agency, by mail, e-mail, with the contact form in the site of the Employment Agency or the boxes for alerts and comments.

Very important for assessing the improvements made to the provision of services to the labour market by the EA and the labour offices are the feedback and customer satisfaction measurement questionnaires. The survey is anonymous, but the feedback from the beneficiaries is essential for assessing the effectiveness of services provided and taking action for improvements.

Public services in the area of employment in Bulgaria are effective, evident from the results of their implementation.

As a result of the overall activity and Employment Agency and services it provides, in 2014 **239 660 unemployed persons started work**, of which in the primary market - more than 188,000 in employment programs - over 29,000, almost 20,000 under HRD OP schemes and over 2000 under encouraging measures. **In training for professional qualification and key competencies were included about 53 thousand unemployed and employed persons – almost 32 000 unemployed and over 21 000 employed persons.**

According to EA's 2014 report, as a result Agency's actions as public mediator in the labour market during the reporting period the following results have been achieved:

- The **registered unemployment rate** in the country was 11.2% on average for 2014 against a target of 12.2% laid down in the Action Plan of EA. The unemployment rate decreased by 0.1 percentage points compared to 2013 and that was achieved with 37 000 persons less on average in subsidised employment compared to the previous year. At year end, in December unemployed persons were by over 50,000 fewer than in January (in 2013 they were only by 5,500 persons fewer), while the unemployment rate is 1.5 percentage points lower compared to the start of the year.

The **monthly average number of unemployed persons** registered in labour offices in the country is 366,470 persons, by 4910 less than 2013. (in 2013 there was an increase of 6843 persons);

- Job placement intermediators quickly and effectively refer the unemployed persons to vacant jobs. **More than 188 thousand unemployed persons**[1] started work in the primary labour market, 21 thousand up on 2013;

- In order to integrate unemployed persons from disadvantaged groups in the labour market and avoid their falling below the poverty line, in the period January – December 2014, under **programmes and encouraging measures for training and employment** was subsidized the employment of total 59 426 persons, including 9129 persons who started work in the previous year. In new employment were included total 50 297 persons (planned 19 387 persons). In training programs and training and career guidance for adults were included total 10 619 persons.

Active intermediation is going on for job creation in the primary market, communication with employers is being improved and modernized, cooperation with private employment agencies and temporary employment firms is being expanded. Almost 161 thousand vacant jobs were declared in the labour offices in 2014. It should be noted that the available positions are 22 000 more than in 2013. General and specialized **job fairs** which directly meet employers and job seekers are held. In 2014 were held 128 job fairs, of which 48 specialized.

Most effectively are used the ESF funds through the schemes of Operational Programme " Human Resources Development". In January-December 2014 newly concluded contracts under priority axes 1 and 2 of the Operational Programme "Human Resources Development", where the intermediate body is the Employment Agency, totalled BGN 16 391 419.98, actual payments for the same period under the two axes of the OP totalled BGN 172 167 529.28, of which under priority axis 1 – BGN 84 383

[1] This includes also persons who were provided services encouraging them for more active behaviour in the labour market as a result of which they started work.

476.39 and under priority axis 2 – BGN 87 784 052.89. Under the project "Start Administration" were paid additional BGN 1 991 490.

In training were included total 44 009 persons (22 991 under PA 1 and 21 018 under PA2), of which 11 055 in training for acquiring professional qualification (2847 under PA 1 and 8208 under PA2) and 32 954 in trainings for acquiring key competences (20 144 under PA1 and 12 810 under PA2).

In employment, including internship, were included total 19 855 persons.

As a result of the active policy in the field of employment the number and share of **young people registered** in the labour offices decreased. From the beginning of the year a national plan for implementing the European Youth Guarantee is being implemented. More than 61 000 young people aged up to 29, incl. more than 28 000 young people aged up to 24 were offered a service within 4 months after their registration in the labour offices. More than 58 000 youths have started work, including almost 27 000 young people aged up to 24 years.

According to the action plan for 2014 of **the international initiative "Decade of Roma Inclusion 2005-2015"**, the number of unemployed persons covered by the various activities is 28 059. In individual and group forms of vocational guidance and motivation for active behaviour in the labour market are included 13 862 persons. In training for acquiring professional qualification, key competences and literacy are included 1075 persons and 522 of them are under the HRD OP.

EA effectively mediates for job seekers by actively using also the opportunities of the **EURES-network**. In 2014, the Employment Agency, as a member of the EURES network, held 22 events to bring together employers and job seekers from Bulgaria with a view to their working in other EU countries, 120 information sessions for job seekers and graduating students, 16 information events for employers. About 700 persons have started work and practice training.

Regarding the modernization of public services in the field of employment, it should be noted that actions to **increase administrative capacity** at EA and improve the organization of work for the effective implementation of employment policies and provision of quality services to customers are going on. Training received 3020 employees of which 2668 from the "Regional Employment Service" (REO) and "Labour Office" Directorates (LOD) and 352 from the Central Administration (some employees participated in more than one training).

Provision of services to unemployed persons by mobile teams of labour offices in the settlements is also an important element of the process of improving and modernizing public services in the field of employment. In the country are operational **548 remote working places and and affiliates**, which are intended to facilitate the access of unemployed people from remote locations to the services provided by the Employment Agency and its territorial divisions and to activate inactive and discouraged workers in the labour market.

Article 1 - Right to work
Paragraph 4 - Vocational guidance, training and rehabilitation

<u>Questions of the ECSR</u>

The information given by the current report shows that access to certain employment services continues being open only to foreigners with a permanent residence permit, for which 5 years of legal residence in the country are still required. In the absence of developments on this point, the Committee repeats its

conclusion of non-conformity.

The following is laid down in the Employment Promotion Act (EPA):

Chapter Four
RIGHTS AND OBLIGATIONS OF JOB SEEKERS AND OF EMPLOYERS

Section I
General Provisions

Article 17 (1) (amended, SG, No. 26 / 2008) The following services under this Act shall be available to job seekers:

1. information about job vacancies announced;
2. information about employment security and employment promotion programmes and measures;
3. intermediation for furnishing information and placement;
4. psychological support;
5. vocational guidance;
6. inclusion in adult training;
7. inclusion in employment and training programmes and measures;
8. study grant, funds for transport and accommodation for the duration of study.

(2) (Amended, SG, No. 26/2008) The following services under this act shall be available to employers:

1. information about job seekers;
2. information about employment security and employment promotion programmes and measures;
3. intermediation for hiring of labour;
4. inclusion in employment and training programmes and measures;
5. preferences for sustaining and/or increasing employment;
6. preferences for internship and/or apprenticeship;
7. preferences for promoting the territorial mobility of employed persons.

(3) The terms and procedure for provision of the services covered under Paragraphs (1) and (2) shall be established by the Implementing Regulations of this Act.

Article 18, Paragraph 3 of EPA regulates that the rights under this Chapter may be exercised by foreigners holding a permanent residence permit for the Republic of Bulgaria, as well as by:

"2. Persons who have been granted the right of asylum;
3. (amended, SG, No. 26/2003) persons who have been granted refugee status or humanitarian status;
4. persons enjoying such rights as provided for in an international treaty whereto the Republic of Bulgaria is a party;
5. (new, SG, No. 26/2008) third country nationals who are members of the family of Bulgarian nationals or nationals of an EU Member State, of a State which is a party to the Agreement on the European Economic Area, or of the Swiss Confederation;
6. (new, SG, No. 9/2011) members of the family of foreigners holding long-term residence permit;

7. (new, SG, No. 43/2011, effective, 15.06.2011) holders of EU Blue Card who are unemployed in the course of three months or want to change their employer."

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§4 of the Charter on the ground that access to vocational guidance, training or rehabilitation for nationals of other States Party is subject to an excessive length of residence requirement.

Position (it was presented orally during the sessions of the Governmental Committee in 2013:

Right of foreigners to use vocational guidance services, participation in motivational training, vocational training and the training for acquisition of key competences with funds for active policy is regulated by the Employment Promotion Act (EPA).

Employment Promotion Act (and regulations related to its implementation) regulates the access of foreigners - citizens of third countries to the labor market, as well as the intermediation for information and employment of foreigners in the Republic of Bulgaria.

According to Article 18, para 1 of the Employment Promotion Act every Bulgarian citizen, and every citizen of another Member State of the European Union or of another country - party to the Agreement on the European Economic Area or Swiss Confederation, who is active in the seek of job may become registered in the territorial division of the Employment Agency. Bulgarian citizens and citizens of other Member States of the European Union or of other country - party to the Agreement on the European Economic Area or Swiss Confederation, registered as unemployed, may access the vocational guidance services, participate in motivational and vocational trainings and acquisition of key competencies.

The provision of Article 18, para 3 of the Employment Promotion Act has been supplemented (SG. № 9 of 26.01.2011), therefore foreigners with long-term residence permits and foreigners with permanent residence permits in the Republic of Bulgaria have been given the right to use vocational guidance and to participate in motivational and vocational trainings.

According to the Law on Foreigners in the Republic of Bulgaria, the long-term residence has an approved initial period of 5 years which is renewable upon request, and permanent residence – for approved indefinite period. A status of long-term residence is granted to a foreigner who has resided legally and continuously on the territory of the Republic of Bulgaria within 5 years before applying for long-term residence permit.

According to the Employment Promotion Act, in addition to foreigners with long-term and permanent residence, vocational guidance, participation in motivational and vocational training may also be used by:

4. persons to whom this is provided in an international treaty to which the Republic of Bulgaria is a party;

It should be noted that in accordance with the provisions of Article 79, paragraph 5 of the Treaty on the Functioning of the European Union, the Member States retain the right to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

It should also be noted that a preparatory work has begun in the Republic of Bulgaria in order to bring national legislation into full conformity with Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and

work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State**,** adopted in 2011. The deadline for implementation of the requirements of the Directive by the Member States is the end of 2013.

The Directive provides that workers from third countries under Article 3, paragraph 1, letters b) and c) enjoy the right to equal treatment like the citizens of the Member State, in which they reside, in respect to:

....

c) education and vocational training;

However, the Directive allows Member States to restrict equal treatment by:

.....

iii) excluding study and maintenance grants and loans or other grants and loans

……

iv) laying down specific prerequisites including language proficiency and the payment of tuition fees, in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the specific employment activity;

Article 6 - Right to bargain collectively
Paragraph 1 - Joint consultation

Questions of the ECSR

In a previous conclusion, the Committee reiterated its question whether joint consultative bodies exist in the public service (Conclusions 2006) and concluded that, given the lack of information, the situation is not in conformity with Article 6§1 as it cannot be established whether joint consultative bodies exist in the public service. The report indicates that a draft Law on amending and supplementing the Civil Servants Act was prepared at the end of 2012, but has not yet been adopted. The Committee takes note that the Bulgarian representative to the Governmental Committee has stated that an interdepartmental working group was set up with the mission to develop amendments to the Civil Service Act and the Law on Railway Transport in order to meet the standards of the Council of Europe and International Labour Organisation. The working group held meetings and developed proposals to amend the Civil Servants Act, but in 2012 the discussions were postponed (Governmental Committee Report concerning Conclusions 2010, p. 69).

At its session on 9 September 2015, the Council of Minister adopted Decision approving the draft Law amending and supplementing the Civil Servant Act. The proposed amendments to the Civil Servant Act regulate the right of civil servants to strike effectively and collective bargaining.

The proposed amendments to the Civil Servant Act are connected with the alignment of the Bulgarian legislation with international legal commitments. There are regulated matters that could be the subject of the collective agreement in the state administration, as well as the right of civil servants to strike effectively.

Concerning the draft Law it had been approved by the National Council for Tripartite Cooperation and by the Council for Administrative Reform and was now waiting for the final approval of the Parliament.

The Committee requests the Government to inform on any developments of the reform in the public service.

Material amendments to the Civil Servants Act are effective from 2015. These include:

Chapter Two, Formation of Civil Service Relationship:

Article 6 (2) (new, SG No. 99/2001, amended, SG No. 24/2006, supplemented, SG No. 43/2008, amended, SG No. 15/2012, supplemented No. 14/2015, effective 1.04.2015) the appointing authority may delegate the powers thereof or certain powers thereof under the civil-service relationship with the persons of the administration of the chief secretary or, of the Permanent Secretary of Defense and of the Administrative Secretary of the Ministry of Internal Affairs, or of the Permanent Secretary of the Ministry of Foreign Affairs, as the case may be, or of the municipal secretary, as the case may be, except in the cases where otherwise provided for by a law.

Article 9a. (1) The appointing authority shall allocate for persons with permanent disabilities at least:

3. (new, SG No. 14/2015, effective 1.04.2015) one per cent of the total number of positions to be occupied by:

a) civil servants under Article 142, Paragraph 1, Item 2 of the Law on the Ministry of Interior;

b) civil servants under Article 43, Paragraph 1, Item 2 of the Law on the State Agency for National Security;

c) civil servants under Article 19f, Paragraph 1, Item 2 of the Law on Special Surveillance Means.

Amended is also **Chapter Three, Civil Servant Rights.**

Section IV of Civil Servant Rights is amended as follows:

Article 35 (6) (new, SG No. 95/2003, amended, SG No. 24/2006, effective 1.01.2007, supplemented, No. 14/2015, effective 1.04.2015) Annually, the State Budget of the Republic of Bulgaria Act shall allocate resources for upgrading of professional qualification and for retraining of administration staff to the amount of 2 per cent of the wage bill planned, and for MoI, State Agency for National Security and State Agency for Technical Operations – up to 1 per cent of the wage billed planned for civil servants under Article 9a, Paragraph 1, Item.

Section V, Working Time, Rest and Leaves, is amended as follows:

Article 51. (3) (new, SG No. 54/2015, effective 17.07.2015) In administrations where the organisation of work so permits, floating working time may be established within acceptable limits. The time during which the civil servant has to be present at work in the administration shall be set by the appointing authority.

(4) (new, SG No. 54/2015, effective 17.07.2015) In the cases referred to in Paragraph 3, outside the time of compulsory presence, the civil servant may work the daily working hours of certain days on the next day or on another day of the same working week. The method of reporting of the working hours shall be determined by the rules of procedure of the respective administration.

Article 86a. (new, SG No. 38/2012, effective 1.07.2012) (1) The appointing authority, after obtaining a written consent from the civil servant, may second the said civil servant to perform the service thereof temporarily in another administration for a period of up to two years, with the duration of the secondment being extendable on a

single occasion.

(2) (new, SG No. 24/2015) Subject to Paragraph 1, a civil servant may be seconded to perform the service thereof temporarily in an international organisation or in another international initiative on the territory of the country for a period of up to three years, with the duration of the secondment being extendable on a single occasion for a period of up to one year, except in the cases where otherwise provided for by a law, international treaty or the requirements of the receiving organisation for holding the respective position.

(3) (previous Paragraph 2, amended, SG No. 24/2015) For the time of the secondment, the civil servant shall receive from the receiving administration, the international organisation or the respective body of the international initiative assignments associated with the qualification and experience of the said servant, based on the service thereof theretofore.

(4) (previous Paragraph 3, supplemented, SG No. 24/2015) For the duration of the secondment, the civil servant shall be paid the basic salary or the basic remuneration thereof, as the case may be, and supplementary remunerations by the sending administration. The head of the receiving administration shall periodically send the sending administration an evaluation of the work of the servant seconded and other information required to evaluate the execution of office thereof.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

Paragraph 4 - The right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties

There were no legislative changes during the reference period.

Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Questions of the ECSR

Equal rights

The previous report states that the provisions of a draft Act on Equal Opportunities for Men and Women, submitted to the National Assembly in 2006 but subsequently withdrawn, are incorporated into the Protection against Discrimination Act and that it is therefore not necessary to enact a specific law on equal opportunities for women and men. It notes from another source (the European network of legal experts in the field of gender equality, the transposition of the Recast Directive 2006/54/EC – update 2011, p.33) that the Bulgarian government is reluctant to enact a special law on gender equality. It requests that the next report provide clarifications and justifications with regard to this matter.

A new draft Law on gender equality was developed and discussed in 2015. It aims to ensure gender equality by regulating the authorities and mechanisms of an integrated government policy in the field of these social relations.

The draft law has been prepared pursuant to national programming documents and Bulgaria’s commitments under international treaties:

- Implementation of the measure "Adoption of Law on Gender Equality and institutionalization of the national mechanism for equality between women and men" under Objective 32: "Promoting gender equality and non-discrimination" of the Government Program for Sustainable Development of the Republic of Bulgaria, 2014-

2018.

- Implementation of measures in the Action Plan in fulfilment of the final recommendations of the UN Committee on the Elimination of Discrimination against Women (CMD No. 438 / 07.25.2013), addressed to the Republic of Bulgaria in 2012, in particular measures under recommendations in the areas of "Legal framework for equality", "National mechanism for achieving the advancement of women" and "Temporary special measures".
- Implementation of the commitments of the Republic of Bulgaria under international agreements in the field of human rights, to which Bulgaria is a party and recommendations to Bulgaria of the relevant implementation monitoring bodies - the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action of 1995. In 2016, Bulgaria shall submit to the UN its latest periodic report on the implementation of the provisions of CEDAW, wherein it shall report on the implementation of recommendations, including: adoption of law, strengthening the national institutional mechanism on gender equality and regulating temporary special measures.
- Fulfilment of commitments stemming from Bulgaria's membership in the European Union and related to the integration of the principle of gender equality in all policies and harmonization of national legislation and practices.

Current law is trying to respond to the need to ensure gender equality which is achieved formally but not actually (really). Achieving de facto gender equality in all areas requires an effective mechanism for managing an integrated state policy that consistently pursues the equality principle by combining an integrated approach and special measures. The institutional mechanism is a strong and sustainable tool for development, implementation and monitoring of relevant policies ensuring that the issue of gender equality remains high on the political agenda and on the public agenda.

The draft law meets the need for fuller regulation of gender equality through statutory regulation of the national mechanism for implementing a unified state policy in this area. Currently there is lack of legal regulation of a comprehensive national institutional mechanism. The draft act will fill this gap in Bulgarian law.

State policy on gender equality has a horizontal, cross-cutting nature. Such policy requires effective national institutional mechanism functioning at different levels of governance by integrating (mainstreaming) of these issues in all policies and applying temporary special measures where necessary. At present these requirements are implemented by operation of the elements of the institutional mechanism regulated in the Rules of organization and operation of the National Council on Gender Equality to the Council of Ministers, adopted with a decree of the Council of Ministers.

The establishment of effective national institutional mechanism is necessary for improving the allocation of management responsibilities between relevant authorities, clear commitments, better management of the process of policy implementation and resources. The draft act has a framework nature and meets the need for full regulation of the bodies and mechanisms for implementing the state policy on gender equality.

The bill regulates the principles that underlie the state policy on gender equality, the bodies, outlines their powers and interaction in the policy on gender equality and sets out the basic approaches such as integrated cross-sectoral approach and temporary encouraging measures.

The Council of Ministers determines the state policy and approves the main documents in this area. The National Council on Gender Equality at the Council of

Ministers continues to function as an advisory and coordinating body. The Minister of Labour and Social Policy is the body that manages, coordinates and controls the implementation of the policy at national level.

Institutionalized is the figure of "gender equality coordinator" who is an employee in the executive bodies, and his/her functions are set out. Regulated is the pursuit of the policy at regional level and the establishment of committees on gender equality with a decision of the Regional Development Councils. The determination of the authorities, their functions and mechanisms of interaction, strengthens the national institutional mechanism and enhances the implementation at operational level of the state policy on gender equality.

Regulated are the basic documents of the state policy on gender equality - National Strategy, action plans and periodic reports. In view of ensuring the information support of the policy, an obligation for public authorities to record and process data by gender is proposed, as well as the creation of a national information system to monitor gender equality. Effective implementation of the policy on gender equality is promoted through the creation by the Minister of Labour and Social Policy of the symbol of significant achievements.

The proposed draft Law on gender equality will lead to legal regulation of a comprehensive national institutional mechanism on gender equality and its functioning at different levels of management to effectively implement a uniform horizontal and integrated government policy in this area, with a view to accelerating the achievement of de facto gender equality by ensuring full compliance of national legislation and practices with EU requirements and international treaties to which Bulgaria is a party. By regulating the national institutional mechanism the bill creates a framework for consistent, efficient and coordinated management of the state policy on gender equality in a strategic and operational aspect. Thus the policy is placed on a systematic, broad, cross-sectoral basis, it has a horizontal effect and consistently pursues the principle of gender equality by combining an integrated approach and specific measures with a temporary effect when necessary. This creates conditions for accelerating the achievement of de facto gender equality in all areas of economic, political and social life.

The text of the draft law is attached to the report.

In the absence of any response in the report, the Committee asks again how judicial bodies (and the Commission for protection against discrimination) interpret and apply the principle of equal pay in claims related to unequal pay. The Committee again asks what steps have been taken to reduce the wage gap between women and men.

Protection against discrimination in the exercising the right to work is specifically covered by Chapter II, Section I PADA which also contains requirements for equal treatment in payment of salaries and wages. It is expressly laid down in Article 14, Paragraphs 1 and 2, that the employer shall provide equal pay for equal work; this requirement applies to all wages paid, directly or indirectly, in cash or in kind, regardless of the duration of the employment contract and the working hours. According to Article 14, Paragraph 3, the criteria for assessment of the work in setting wages and evaluating job performance are the same for all employees and are determined by collective agreements or internal rules for the salary regardless of the elements under Article 4, Paragraph 1.

The provision of Article 243, Paragraph 2 of the Labour Code also explicitly introduces a statutory requirement that the principle of equal pay for equal work of equal

value of men and women shall to all payments under the employment relationship. Equal pay is interpreted according to the provisions of Convention № 100 of ILO on equality in pay. According to Article 1, A), the term "pay" for the purposes of the Convention includes the ordinary, basic or minimum wage and all other remuneration paid directly or indirectly, in cash or in kind by the employer to the worker for his work. With the ratification of the Convention (effective in Bulgaria from 07.11.1956) the country undertook the commitment by means appropriate to the current methods for the determination of remuneration to promote and, to the extent that it is consistent with such methods, to ensure the application to all workers of the principle of equal pay to male and female workers for work of equal value.

The Government of the Republic of Bulgaria pays special attention to the development of measures to overcome the inequalities in employment and pay of women and men, including through counselling, motivating and training according to the specific needs and prospects for their development. Promoting gender equality has a direct impact on the quality of human resources. The measures in the field of equality of men and women for achieving gender equality and the process of strengthening the national gender equality infrastructure are planned annually. Civil society and interaction with the social partners have an essential role in the development of this process.

Republic of Bulgaria set out in the first report on the achievement of the Millennium Development Goals (Goal Three "Gender Equality") targets and indicators that the country must meet by 2015. Among them is the elimination of disparity between the incomes of men and women - share of women's salaries in the salaries of men to reach 80%.

In 2012, within the project "*Improving the capacity of the public administration* to implement *gender mainstreaming* approach in national policies and and programmes", MLSP developed Best Practices Manual from international experience of applying the gender mainstreaming approach in which best practices of ensuring equal pay for work of equal value have an important place.

Key national regulations guaranteeing equal opportunities and equal treatment in employment and occupation without discrimination based on sex are the Constitution of the Republic of Bulgaria, the Labour Code, the Law on Protection against Discrimination. An important step towards ensuring equality between men and women, including in terms of pay, is the development of a draft law on gender equality.

In relation to the requested statistics of difference in pay by gender, we are presenting below data from the National Statistical Institute:

Difference in pay, percent:

Economic activities	**2011**	**2012**	**2013**
Mining and quarrying	**15.5**	**19.4**	**14.4**
Manufacturing	**24.9**	**25.7**	**25.8**
Generation and distribution of electricity and thermal energy and of gaseous fuel	**19.6**	**12.9**	**9.4**
Water supply, sewerage, waste management and remediation activities	**2.8**	**2.6**	**2.6**

Economic activities	2011	2012	2013
Construction	-8.3	-6.6	-9.3
Trade and repair of motor vehicles and motorcycles	9.5	12.1	11.6
Transport, storage and postal activities	15.5	14.4	11.3
Accommodation and food service activities	12.2	14.6	10.5
Creation and distribution of information and creative products; telecommunications	8.3	12.2	14.3
Financial and insurance activities	21.4	26.7	26.6
Real estate activities	-4.2	1.1	-1.1
Professional and scientific activities	6.8	13.5	15.3
Administrative and support service activities	-14.8	-13.1	-11.8
State governance	10.3	10.9	6.2
Education	11.1	13.4	11.7
Human health and social work activities	26.1	30.8	30.9
Cultural activities, sports activities and amusement and recreational activities	22.1	26.2	27
Other activities	2.6	-6.0	-9.6

Interpretation and application by the Commission for Protection against Discrimination and by the judicial authorities of the principle of equal pay in cases of claims related to unequal pay

Within the framework of our national legal system, in Decision No. 29/04.07.2007 the Commission for Protection against Discrimination (CPD) has examined a complaint by the applicant who worked as an operator of a mill. Her basic salary compared to that of her male colleagues at the same position, was the lowest, while in the reviewed period the applicant had the highest number of years in the company, which implied that she had acquired skills as a driver of a grinding installation operator of the cement mills (the positions are defined as identical). In their rationale, CPD found that for equal work the employer is obliged to provide equal pay, namely equal basic salary and additional payments for harmful working conditions (in this case - cement production). "... The basic wage is one of the elements of remuneration, but it is this element that expresses the equal treatment of women and men doing equal work. The comparative summary shows that the employer has not breached the principle of equal treatment of women and men in determining bonuses for working conditions. The proven fact that with any agreed increase in the basic wage the employer increased the basic salary of the applicant is irrelevant. Unequal treatment as a form of direct discrimination is proven by the fact that with any increase her base salary remained always by 45 BGN lower than the salaries of her male colleagues. The Staff Procedures...provide for individual assessment of worker's/employee's performance at least once a year... The defendant has not provided evidence that such an assessment was carried out for the complainant and that the lower basic salary is due to unsatisfactory results of the assessment ... the Commission found proven the facts of unequal treatment of the applicant by the employer as ... she received a lower basic salary for equal work

compared to her male counterparts. The argument of the defendant that evident from the statement of remuneration at engagement of the other operators for the same positions the pay of the applicant ... was higher than that of the two men does not provide grounds to accept that she was not a victim of discrimination ... Unequal treatment occurs ... when in raising the basic salary of all men they are recognized higher personal contribution ... the applicant submitted two applications for levelling ... i.e, she wanted for her personal contribution to be assessed. The argument that the applicant received the second largest salary in her group is also irrelevant. Irrelevance stems from the fact that gross wages, which include salaries and seniority pay, are compared. References show that the applicant has the highest number of years of service and therefore the highest pay in terms of this additional compensation element. The defendant does not prove ... that the difference in the size of the base salary of the applicant compared with that of her male colleagues is a result of the assessment of personal contribution and qualities ...". CPD establishes systematic unequal treatment of the applicant, which constitutes a violation of Article 14, Paragraph 1 of PADA. and represents direct gender-based discrimination of the applicant within the meaning of Article 4, Paragraph 2 of PADA.

The Commission's decision was appealed before the SAC, which in decision 4180 / 25.04.2007 also found a violation and gave the following important motives in the case: "... Basic salary is the remuneration due by the employer for the fulfilment of the agreed work function during normal working hours and under normal working conditions. It is "basic" in a threefold sense: it is paid for the overall performance of the work function under the employment relationship, serves as base salary, supplemented with other additional remuneration, serves as a base for calculating certain additional remuneration or payments under the employment relationship such as additional remuneration for length of service. Indeed, there is a contractual principle in determining the employment remuneration, which is expressed in the use of the collective and the individual employment contract. ... An important expression of the intention to regulate the remuneration is the sectoral principle of regulation included in March 2001 with the amendments to the Labour Code, namely the "right to equal pay" laid down in Article 243 of LC ... This principle is a continuation and elaboration of the principle of non-discrimination laid down in Article 6, Paragraph 2 of the Constitution, Article 4, Paragraph 1 of the Contacts and Obligations Act Article 8, Paragraph 3 of LC. The legal content of this principle is revealed by the following constituent elements:

1. It refers to the amount of the employment remuneration as a key point for the entire system of the institute of employment remuneration and the right to remuneration, and

2. The criteria for equality of remuneration in Article 243, Paragraph 1 of LC are two:

a / for equal work. “Equal work” means work carried out by different parties, but with workforce of the same quality / training, skills, dexterity, mental and physical abilities and strength, etc. and

b / for work of equal value. Of equal value is the work done by different individuals who have workforce different in their qualification, belong to a different profession and specialty, perform work of different nature work but the work done has equal value and utility.

In all cases the main feature of the principle of equal remuneration under Article 243 of the Labour Code is that it that relates to the prohibition of a specific discriminatory criterion: the criterion "gender identity." The five-member panel of the Supreme Administrative Court leaves in force the decision of the court of first instance and holds that "higher educational attainment should not affect the amount of the basic

salary if it is not necessary for the performance of the work functions. It could be considered that the complainant submitting the complaint to the Commission for Protection against Discrimination has received equal treatment on the grounds that her remuneration was increased in proportion to that of other workers. The increase does not remove, it retains, although with other values, the existing inequality in initially determined basic salary compared to that agreed for the men doing work equal to her work. The lower amount of base salary is not compensated by the amount of additional remuneration that the employee received for length of service and even affects its amount because the additional remuneration is determined as a percentage of the agreed basic wage."

We are enclosing judicial decisions showing the interpretation and application of the principle of equal pay to men and women for work of equal value.

The report states that in 2010 the agency responsible for labour inspection did not conduct any inspections relating to gender equality. The Committee asks that the next report provide information on inspections concerning gender equality issues, the outcome of such inspections and the action taken, and if no inspections have taken place in this field, that it provide justifications.

In the reference period the General Labour Inspectorate (GLI) conducted inspections in relation to gender-based discrimination.

We are enclosing decisions of the Commission for Protection against Discrimination on specific cases related to gender equality in which the General Labour Inspectorate conducted inspections and collected information.

The Committee also asks for information on cases of sex discrimination dealt with by the independent Commission for Protection against Discrimination during the next period of reference and on the penalties imposed.

We are enclosing cases of gender-based discrimination examined by the Commission for Protection against Discrimination.

The Committee notes that on 15 December 2011, i.e. outside the reference period, the Council of Ministers adopted a national action plan to encourage gender equality. It asks that the next report take stock of the impact of this action plan in the fields of employment and training.

In the report on the implementation of the 2012 National Action Plan for promoting gender equality 2012 are presented the results of its implementation. The most important of them are:

With Order No. 01-85/31.01.2012 of the Minister of Labour and Social Policy was established interdepartmental working group to prepare a draft of the Amendment of the Law for Protection against Discrimination (PADA) and a draft Amendment of the Social Security Code (SSC) in connection with the introduction of the requirements of **Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.** Directive 2010/41/EU establishes a framework for implementation in the Member States of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity or contributing to the implementation of such

activities in respect of matters which are not covered by other directives.

For this purpose, the draft law prepared by a working group with representatives of MLSP, NSSI, CPD, CM and NRA introduced amendments to the PADA and through its final provisions – to the Social Security Code (SSC).

Thus the provisions of Directive 2010/41 / EC were introduced into national law and were strengthened the regulatory guarantees for ensuring equal treatment between men and women and protection against gender-based discrimination of persons falling within the scope of the Directive in connection with doing business in a self-employed capacity in accordance with the conditions laid down in national legislation.

The requirement was introduced to integrate the principles of gender equality and non-discrimination on the grounds referred to in Article 4, Paragraph 1 of the Law on Protection against Discrimination in drafting and implementing regulations. Regulated is a permissible exception to the equal treatment of genders in the adoption of positive measures related to the promotion of entrepreneurship among women, where they are the not-represented gender. Expressly regulated is the application of the principle of equal treatment through non-discrimination in terms of doing business. Expanded is the competence of the Commission for Protection against Discrimination by assigning to it functions for dissemination of information on existing regulations in the field of protection against discrimination to the persons concerned by all appropriate means.

The Social Security Code was amended by regulating the right of the spouses of self-employed persons to benefit from social protection and maternity benefits through their inclusion in the circle of insured persons. Spouses of persons registered as freelancers and / or craftsmen or registered farmers or tobacco producers when they participate in work done by such persons but are not employees or partners will be able to insure themselves on a voluntary basis for disability due to sickness, old age and death and for general illness and and maternity if they are not insured for general illness and maternity on other grounds.

The amendments grant the right for recognising as pensionable service the period during which the person insured of the above grounds received a cash benefit for temporary disability, pregnancy and childbirth and for child-raising and the periods of temporary disability, pregnancy and childbirth and raising a child, in which the person was not entitled to monetary compensation. The amendments contribute to bringing national legislation and practice in accordance with the provisions of European Union law for promoting equality of women and men in connection with doing business in a self-employed capacity, for better reconciliation of work and family life (PADA, amended and supplemented, SG No. 58 of July 31, 2012, effective August 1, 2012).

The Executive Agency for Promotion of Small and Medium-sized Enterprises organized in 2012 the following events in which participated representatives of the country's leading associations of women entrepreneurs - Club of Women Entrepreneurs and Managers in Bulgaria and the Bulgarian Association of Women Entrepreneurs:

1. Information meetings held during the period from March to April 2012 in 27 cities countrywide. During the meetings, the participants were presented the possibilities and conditions for the participation of Bulgarian companies in specialized international exhibitions and fairs; business missions abroad; specialized seminars aimed at development of foreign skills and presentation of Bulgarian enterprises in foreign markets; as well as for registration and obtaining information from the National Export Portal www.export.government.bg.
2. In the period from 7 to 15 October 2012 in seven regional centres in the country were organized information seminars on "Policies to promote exports. Funding opportunities." At which were discussed the instruments to promote exports offered by

public and private institutions. Experts from the Ministry of Economy, Energy and Tourism commented the trade arrangements and information resources of the EU. The topics discussed included presentation of the opportunities for funding and insuring exports by SMEs.

In November 2012, the Executive Agency for Promotion of Small and Medium Enterprises (EASME) together with the Club of Women Entrepreneurs and Managers in Bulgaria (CWEMB) started the organization of the forum "Meeting of the Government of the Republic of Bulgaria with the companies managed by women". The main objective of the forum was to discuss issues related to the possibilities for support from the Bulgarian institutions to strengthen the Bulgarian companies in different areas such as technology development, implementation of new technologies, finding new markets, managing human resources, etc.

In 2012, the active labour market policy initiatives realized by the Employment Agency and financed from the state budget and from the European Social Fund included nearly 90 000 women - unemployed and employed (including in programs and encouraging measures under the EPA - almost 20 600 women, in training and employment schemes of the OP "HRD" - more than 69 000 women[2]).

According to the administrative statistics of the Employment Agency in 2012 in employment programs and training financed from the state budget were included 18 114 women, or 51.7% of all persons included in programmes.

Of these, in the program "From Social Assistance to Employment" the share of women is 45.3 percent, in the National Programme “Assistants for People with Disabilities” - 67.0%, in “Career Start” –59.0 percent, in the National Program for employment and training of people with permanent disabilities - 56,9%, in “New Employment Opportunities” - 63.6%. As a result of the activities of Roma mediators appointed under the National Programme "Activation of inactive persons" in the labour offices were registered 5 387 women, or 50.6% of the total number of inactive persons registered in the labour offices as a result of program’s implementation.

Unemployed women are one of the target groups of the project "Fulfilment II" of CL "Podkrepa", financed from the state budget under the 2012 National Employment Action Plan. The project improved the employability of 1121 (61.2%) women through motivational training and training for acquiring key skills and professional skills.

The share of women included in the measures under the Employment Promotion Act (EPA) is 56.8%. Under measure to encourage employers to hire unemployed persons - single parents (adoptive parents) and / or mothers (adopters) with children up to the age of 3, in 2012 employment was provided to 161 women and under the measure for mothers (adopters) with children from 3 to 5 years of age – to 186 women.

To support and promote the reconciliation of work and private and family life of parents with children aged 0 to 3 years is implemented the scheme "Back to Work" – project "Babysitter - a chance for realization with training towards employment". With resources from the European Social Fund through the Operational Programme "Human Resources Development" are made available free childminders who are predominantly women in retirement. The number of families involved early in the project is almost 2500 (2012: 704) and the number of unemployed women involved in employment as nannies - about 2300 (2012: 577).

In order to improve the quality of the workforce the Employment Agency provides opportunities for participation in training for acquiring or improving the

[2]A number of schemes under OP "HRD" ("Development", "Back to Work", "Qualification and Employment Promotion", "First job") offer both training and employment after training. Therefore, some of the persons are included both in training and employment.

qualification and the foreign language and digital competences of unemployed and employed persons under the schemes of HRD OP. The share of women - unemployed and employed, included training for professional qualifications and key competences under the schemes of the Operational Programme is 53.6%. In employment and in employment after training under schemes of HRD OP were included more than 23 thousand women, or 46.4% of the total number of unemployed persons included in employment and in employment after training.

In order to promote equality between women and men were taken the following measure:

- *Encouraging employers to hire unemployed persons - single parents (adoptive parents) and / or mothers (adopters) with children up to the age of 3.* The main objective of the measure is to provide support for the reconciliation of family and professional life of the unemployed persons from disadvantaged groups in the labour market. The implementation of the measure improves the access to employment for people from disadvantaged groups by saving costs for employers for work and social security for a certain period of time. In 2012, with funds from the budget of the MLSP for active policies were funded salaries and social security contributions of persons involved in employment for a period of six months. During the reporting period under the terms of the encouraging measure worked 271 persons on average. Spending amounted to BGN 521 140.

- *Encouraging employers to hire unemployed mothers (adopters) with children from 3 to 5 years of age*. The main objective of the measure is to provide support for the reconciliation of family and professional life of the unemployed mothers (adopters) with children from 3 to 5 years of age. Unemployed mothers are included in training for acquiring professional qualification and subsidized employment for up to six months. In 2012, under the terms of the measure in training was included one mother and 247 worked on average. Spending amounted to BGN 466 613.

Under the scheme "Back to Work" were taken the following actions: Under the scheme, the Monitoring Committee of HRD OP approved changes in the selection criteria for the operation and the deadline for implementation of the project was extended until 31.12.2013. Changes were made also to the conditions under which parents can apply to join the project - an opportunity was provided for parents of children from 0 to 3 years of age to participate in the scheme (in a previous version requirement for children was to be between 1 and 3 years of age) and the restriction that one parent must be on maternity / paternity leave at the time of application under the scheme was removed, i.e. both parents can be employed. Changed was also the amount of the remuneration of the representatives of the target group, included in employment, for rearing of one child and two and / or more children. During the reporting period in training were included 824 persons, of whom 734 successfully completed the training. In employment were included 583 unemployed persons.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 20 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of sex discrimination which may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

Position: The conclusion on Art. 20 covers the cases of unlawful dismissal as a result of sex discrimination. These cases are in the field of unlawful dismissal due to all types of discrimination, therefore it is relevant the provided information in the report on

Art. 1, para 2 of the ESCh. (rev.).

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

Questions of the ECSR

The report underlines that social and cultural services are usually included in the scope of collective agreements and are negotiable. The Committee invites the Government to provide examples of such socio-cultural services and facilities contained by collective agreements and how the workers are actually involved in their organisation.

In terms of social benefits in most collective bargaining agreements (CBA) the employer is obliged to allocate for social and cultural needs a percentage of the Wage Fund, which for BDZ (Bulgarian State Railways) – railway transportation and railway infrastructure reaches 15%. This money is spent for canteens, social assistance and others.

An example of social and cultural services and benefits is Section 8 of the collective agreement of the Ministry of Interior (MoI)

Section VIII
Social and Living Support and Assistance

Article 60 (1) The employer shall provide funds for social, living and cultural services (SLCS) for the respective year in an amount not less than the one specified in the regulations for the budget sphere.

(2) The funds for SLCS shall be allocated by the Social Partnership Council.

Article 61 (1) The employer shall provide housing to the employees from the institutional housing fund of MoI under terms and conditions established in MoI.

(2) Representatives of the trade unions shall be involved in the commissions for allocation of housing.

Article 62. The employees, the members of their families and their parents shall be entitled to free medical care, hospital care and prophylaxis in the Medical Institute of MoI and to use the affiliates for aftercare under the terms and conditions specified for the civil servants in MoI.

Article 63 (1) The employees and the members of their families shall be entitled to summer and winter holidays in the institutional recreational facilities of MoI.

(2) Representatives of the trade unions shall be included in the commissions for allocation of the recreation cards.

Article 64 (1) The employer shall insure the employees for its account against death, temporary disability or permanent disability or reduced ability to work as a result of an accident.

(2) The employer shall inform the employees about the amount of the insurance premium and the terms and conditions for execution of the insurance.

Article 65 (1) The employees who are in difficult material situation as a result of illness or accident or death of a family member, as well as who have suffered material financial damages due to natural disasters and civil events shall be granted one-off financial benefit.

(2) The amount of the financial benefit and the method of granting shall be in accordance with the procedure laid down in MoI.

(3) Trade unions may make proposals for granting benefits under paragraph 1 to employees – mothers with many children, from socially weak families and other severe cases.

Article 66. The trade unions may make proposal to the employer for improvement of the social and living support and assistance for employees.

Evident from the provision of Article 66, trade unions play an important role in guaranteeing and taking into account the opinion of employees and their participation in the organisation of the social and cultural services and funds.

In its previous conclusion (Conclusions 2010), the Committee reiterated its question as to whether employees' representatives other than trade union representatives have a right to lodge complaints with competent courts in the event of a violation of their right to participate and what sanctions are imposed by courts.

The information provided by the report is of general matter and therefore the Committee asks more specifically whether employees' representatives may challenge any violation of the workers' right to take part in the determination and improvement of working conditions and working environment before competent courts or administrative bodies (for example the Labour Inspectorate), what are the competent courts or administrative bodies in this respect, what is the procedure and what remedies are available.

The representatives of the workers and employees could be other than trade unions. This is regulated in Article 2, Paragraph 7 of the Labour Code – "(2) Employees may elect at general meeting representatives of theirs, who shall represent their common interests on issues of labour and social security relations before the employers or before the Government bodies. Such representatives shall be elected by majority of more than two thirds of the members of the general meeting."

The text allows for representatives of employees to be elected by their General Assembly by a qualified majority. The representatives thus elected can represent the interests of workers / employees before the employer and before the state bodies and organizations. The law does not regulate the mechanisms of regular contacts and interaction of the elected representatives elected with the employees in the way this is done by the statutes of trade unions and their internal organizational statutes.

This representation is more limited in terms of opportunities than the one which trade unions have in respect of their members. Trade unions with their possible involvement at the various levels of trilateral cooperation carry out protection and representation in matters directly related to labour relations and issues concerning the standard of living. They have the opportunity to directly influence the individual employment relationship through the system of collective bargaining, negotiating better conditions for their members. But where there are no trade unions, representatives of the employees will have to be determined pursuant to Articles 6 and 7 of the Labour Code.

General Meeting of Employees

Article 6 (1) (amended, SG, No. 100/1992, amended, SG, No. 25/2001, effective 31.03.2001) The General Meeting shall comprise all employees of an enterprise.

(2) Where a general meeting cannot function because of the work pattern or for some other reasons, a meeting of proxies may be established by initiative of the employees or of the employer. Such meeting shall comprise proxies of the employees elected for a term determined by the general meetings within the structural units of the enterprise. The rate of representation shall be determined by the employees and shall be the same for the entire enterprise.

(3) The rules for the general meeting of employees shall apply to the convening, the proceedings and the authority of the meeting of proxies.

Work Pattern of the General Meeting (title amended, SG, No. 25/2001, effective 31.03.2001)

Article 6a (New - SG, No. 2/1996)

(1) (New - SG, No. 25/2001, effective 31.03.2001) The General Meeting of employees shall determine on its own its work pattern.

(2) (previous Paragraph 1 – SG, No. 25/2001, effective 31.03.2001) The general meeting (the meeting of proxies) at the enterprise shall be convened by the employer, by the management of trade union organization, as well as upon the initiative of one-tenth of the number of employees (proxies) in the enterprise.

(3) (previous Paragraph 2 - SG, No. 25/2001, effective 31.03.2001) The general meeting (the meeting of proxies) may conduct business provided it is attended by more than half of the employees (proxies).

(4) (previous Paragraph 3, amended – SG No. 25/2001, effective 31.03.2001) The general meeting of employees shall take decisions by simple majority of the attending employees, unless otherwise provided by this Code, another law or statute.

Employees' Participation in the Management of the Enterprise

Article 7 (1) (Amended – SG No. 100/1992, previous Article 7 – SG No. 25/2001, effective 31.03.2001, amended – SG No. 48/2006, effective 01.07.2006) Employees shall participate, through a representative of theirs, in the discussion of, and resolving on enterprise management issues only when provided by law.

(2) (New – SG No. 25/2001, effective 31.03.2001) Employees may elect at general meeting representatives of theirs, who shall represent their common interests on issues of labour and social security relations before the employers or before the Government bodies. Such representatives shall be elected by majority of more than two thirds of the members of the general meeting.

(3) (New – SG No. 52/2004, effective 01.08.2004, repealed - SG, No. 48/2006, effective 01.07.2006)

Bulgaria has no special system of labour courts and labour law cases are heard by the ordinary courts. The labour dispute may be referred in the first instance to the regional and district courts. There are no obstacles for representatives of the employees to challenge a breach of the right of workers to take part in the determination and improvement of working conditions and working environment before the competent courts.

Article 24 - Right to protection in case of dismissal

Questions of the ECSR

Prohibited dismissals

The Committee asks whether a time limit is placed on protection against dismissal in case of illness.

Protection against dismissal of employees working under an employment contract is governed by Article 333 of the Labour Code (LC), including protection from dismissal in case of illness. Article 333 of the Labour Code establishes the so called "preliminary protection" in case of dismissal. It is preliminary because it precedes the commission of dismissal. Its purpose is to put the performance of the dismissal subject to obtaining prior authorization from certain government trade union body and only after receipt of this permit dismissal can be done. This authorization is requested in writing by the employer and must be obtained in writing from the competent government or trade union body. If such approval has not been requested or, where requested, was never given, or not given before dismissal, the dismissal that takes place only on this basis is illegal. The safeguard procedure under Article 333 of the Labour Code constitutes a precondition that the employer is obliged to comply with when carrying out dismissal of employees referred to in the protecting norm of Article 333 of LC. The prior authorization for dismissal means that a competent state or trade union body gives consent or refuses to authorize the dismissal. The powers of such bodies are precisely regulated in the legal norm and the law does not allow their expansion. This body is the respective regional labour inspectorate for the cases under Paragraph 1 and Paragraph 5 of Article 333 of the Labour Code and the relevant trade union body in the case of Paragraph 3 and Paragraph 4 of Article 333 of LC.

The prior authorization for dismissal does not in itself make the dismissal legal. The legality of a dismissal made with prior authorization may be challenged under Article 344 of the Labour Code and the dismissal may be illegal if the other requirements of law are violated. An authorization only means that in carrying out the dismissal this legal requirement is met. But it does not block the way to challenge the dismissal in court. Under the provisions of Article 358, Paragraph 1, Item 2 and Paragraph 2, Item 1 of the LC, claims in labour disputes concerning termination of employment must be made **within two months from the date of termination.**

In view of the basis on which arose terminate the employment, the protection applies:

- to the employee with employment contract (without the contract for additional work – Article 334, Paragraph 2 of LC);

- to employment relationship resulting from competitive examination – Article 336 of LC.

However, the protection does not apply to termination of an employment relationship resulting from an election (Article 339a of LC).

Under the provisions of the Labour Code, Article 333, Paragraph 1, Item 4, in the cases of Article 328, Paragraph 1, Items 2, 3, 5, 11 /partial closing down of the enterprise, staff cuts, reduction of the volume of work, when the requirements for the job have been changed and the employee does not qualify for it/ and Article 330, Paragraph 2, Item 6 /disciplinary dismissal of worker/ the employer can dismiss only with the prior permission of the labour inspectorate in each case: an employee who began using the permitted leave. As **sickness leave** represents permitted leave, the dismissal during a

sickness leave on any of the above grounds is unlawful and should be set aside by the competent court.

According to the provision of Article 333, Paragraph 7 of LC, protection under Article 333 of LC is assessed at the time of delivery of the **order for dismissal**.

In this sense, the date of service of the notice of dismissal is irrelevant for assessing the legality of the dismissal in that it was done by order and the date of service of the order is the date from which the employment relationship is terminated and at which date it should be assessed whether the worker enjoys special protection under the law. /Decision in case No. 19 370 on the docket of Varna District Court for 2011. Decision No. 83 of 03/27/2015 of PC of Byala Slatina in civil case No. 9/2015, etc./

Protection under Article 333, Paragraph 1, Item 4 of LC applies when the employee started using the authorized leave (whether annual paid, unpaid educational leave, **temporary disability leave**, etc.). Once the employee was at work and the order of dismissal was served to him at his workplace, he does not enjoy prior protection, even if serving the **sick note** on the same day after the service of the order of dismissal - Decision № 1529 2006 of III Civil Division of the Supreme Court of Cassation in civil case No. 261/2004.

The importance of the fact that the leave should have started and should be used has to be highlighted. In the above decision which has binding force it is stated that once employee was at work and the order of dismissal was served to him at his workplace, he does not enjoy prior protection, even if holding a sick note for that same day. This is considered binding /according to Interpretation Decision No. 1/2010, SCC's decisions under Article 290 of the Code of Civil Procedure are mandatory for the law enforcement bodies/ also in Decision No. 197/9.06.2011 of the SCC in civil case No. 661/2010, IV Civil Division/.

By Order No. 37/01.09.2015, the Supreme Court of Cassation in civil case No. 5786/2014, III Civil Division, did not allow cassation appeal of the appellate decision of Sofia City Court in the matter on the grounds that there was mandatory and consistent practice - above decision NO. 63/31.03.2011 in civil case No. 1728/2009, IV Civil Division of SCC, decision No. 283/2010 in civil case No. 233/09, IV Civil Division of SCC, decision No. 492/2013, etc. The order which does not allow appeal in cassation presents the following situation: "The employee was authorized to leave due to temporary incapacity, the use of which actually commenced and his superior was informed. After two days the applicant was invited to come to work to be handed the order for termination of the employment contract. In the statement of circumstances under Article 33, Paragraph 1 of LC, which the employee was given to complete at that time, he explicitly stated the above circumstance but the employer ignored it thus violating the mandatory rules of protection in case of dismissal."

The employee is under the obligation to notify the employer in due time - in cases where the employee began taking leave for temporary disability based on a sick note, which leave was subsequently extended, the protection of the employee is excluded only if he intentionally conceals that fact and fails to fulfil his obligation under Article 9, Paragraph 2 of the Ordinance on Medical Examination (Repealed.) to present the new sick note or to notify the employer within two working days of its issuance. /Decision No. 63/31.03.2011 in civil case No. 1728/2009, IV Civil Division of SCC/.

In Decision No. 283/2010 in civil case No. 233/09, IV Civil Division of SCC, it is bindingly accepted that that prior protection under Article 333, Paragraph 1, Item 4 of the Labour Code is applicable in cases where the employee has started using an

authorized leave. In cases where the employee appeared and was present at work, not reporting illness or authorised sickness leave, including at being served an order for dismissal, the employer, acting in good faith within the meaning of Article 8, Paragraph 1 of LC, is not under an obligation to comply with the requirements for obtaining the preliminary authorisation of the labour inspectorate for the dismissal.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Charter on the grounds that:

• employees undergoing a probationary period of 6 months are not protected against dismissal (First ground of non-conformity)**;**

Position (according to the previous reporting system it was provided to the Secretariat as written information):

According to the appendix defining the scope of the Revised European Social Charter in terms of persons protected under Article 24, it is specified in Paragraph 2 that "It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:

a) workers engaged under a contract of employment for a specified period of time or a specified task;

b) workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;

c) workers engaged on a casual basis for a short period.

As mentioned earlier, the contract under Article 70, Paragraph 1 of the Labour Code is concluded with a period of probation up to 6 months to assess the suitability of the employee to perform the work or whether it is appropriate for him/her and it this is not a separate ground for the conclusion of an employment contract; therefore we think that it falls under the categories of employees specified in the appendix for Article 24, Paragraph 2, b), who can be excluded from the full or partial protection under Article 24 of ESC (rev).

• the termination of employment at the initiative of the employer for some categories of employees, on the sole ground that the they have the pensionable age, which is permitted by law, is not justified (Second ground of non-conformity)**;**

Position (according to the previous reporting system it was provided to the Secretariat as written information according to the previous reporting system):

In the amended Labour Code (promulgated, SG No. 7/2012) employer's option to terminate the employment contract upon acquisition of entitlement to old-age pension is dropped. Employer's option to terminate the employment relations with professors, associate professors and doctors of science when they reach 65 years of age is not connected with acquiring entitlement to pension.

• the maximum amount of compensation for unlawful dismissal is not adequate (Third ground of non-conformity)**.**

Position (it was presented orally during the sessions of the Governmental Committee in 2013):

The text of Article 225, para 1 of the Labour Code provides for cases of unlawful

dismissal where the is entitled to compensation from the employer amounting to the worker's gross labour remuneration for the period of unemployment caused by reason of the said dismissal, but not more than six months.

This text covers not only the cases of award of compensation in case of unlawful dismissal due to discriminatory reasons, but also applies to all grounds for termination of employment stipulated in the Labour Code.

Taking into account the conclusions of the European Committee of Social Rights, in 2009 the Ministry of Labour and Social Policy initiated legislative amendments and prepared a draft Law amending and supplementing the Labour Code to repeal the 6 month restriction regulated by Article 225, para. 1. During the coordination procedure objections have been received by the Ministry of Finance and the Ministry of Defense therefore the proposal was not accepted. The arguments of the two ministries were in support of the fact that this provision aims to motivate the employee to seek employment on the labor market. The legal provision only set up the performance (searching and finding suitable employment) within reasonable time limits, which is entirely in the legislature's expedience/advisability.

In support of the existence of such time limits are several other circumstances:

- The introduction of the so called summary proceeding adopted in 2008 and regulated by the Code of Civil Procedure – the labour disputes must be considered according to the provisions of the summary proceeding , this means that, essentially, the proceeding is two-instance (the cassation instance, only in very rare or exceptional cases). It means that a labour dispute may be definitively settled within a period of six months, as long as the plaintiff is acting in good faith and keeps the deadlines. In its Observations, adopted in 2012, the Committee of Experts on Application of Conventions and Recommendations with reference to Right to Organise and Collective Bargaining Convention, 1949 (No. 98) welcomes the information provided by the Government in this matter.
- The provision of Article 242 of the Code of Civil Procedure provides anticipatory enforcement of the first-instance` judgments where the court awards remuneration and compensation for work.
- In the beginning of 2013 the Supreme Court of Cassation adopted an interpretative judgement. It enacts that in cases of non-performance of an obligation resulting of a contract, the Court may award compensation for non-material damages which are a direct and immediate consequence of the tort. That type of compensation has no upper limit (Obligations and Contracts Act, Code of Civil Procedure). On the ground that the labour relationships are also contract relationships it means that in cases of unlawful dismissal the employee disposed of another essential tool for civil protection – the claim under the Obligations and Contracts Act.

It`s important to be noted that the interpretative judgements of the Supreme Court of Cassation are shall be binding on judicial and executive bodies, on local government bodies, as well as on all bodies issuing administrative acts.

Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer

<u>Questions of the ECSR</u>

In reply to the Committee's question asked in the previous conclusion, the

report states that the right to guaranteed receivables is a subjective material right which arises on the date of the court decision for initiating the insolvency proceedings with the employer. The Committee understands that this right also arises in situations where there has been no formal declaration of insolvency and the enterprise has not been placed in receivership as well as in those cases where the employer's assets are insufficient to justify the opening of formal insolvency proceedings. The Committee asks the next report to confirm that this is the case.

The Guaranteed Employee Receivables in case of *Employers' Bankruptcy Act* regulates the following:

Article 4 (1) (Amended – SG No. 34/2006, effective 01.01.2008, amended – SG No. 48/2006, effective 01.07.2006) Right to guaranteed receivables under this law shall have the employees who are or were in labour relationship with the employer under art. 2 regardless of its term and the duration of the working time, and whose legal relationship:

1. (amended – SG NO. 18/2011 г.) has not been terminated as of the date of entering into the trade register of the decision under Article 6;

2. (amended – SG No. 18/2011) has been terminated during the last three months before the date of entering into the trade register of the decision under Article 6.

(2) (amended – SG No. 84/2013, effective 01.10.2013) The persons under Paragraph 1 may enjoy rights under this law on condition that the employer has carried out an activity at least 6 months before the initial date of the insolvency, respectively the excessive indebtedness indicated in the decision under Article 6.

Pursuant to Article 6 (amended – SG No. 34/2006, effective 01.01.2008, amended – SG No. 48/2006, effective 01.07.2006, amended – SG No. 18/2011) The right to guaranteed receivables of the employees under Article 4, Paragraph 1 shall occur on the date of entering into the trade register of the court decision for:

1. instituting bankruptcy proceedings;

2. instituting bankruptcy proceedings with simultaneous declaring of bankruptcy;

3. (amended – SG No. 18/2011) instituting bankruptcy proceedings, issuing a decree for termination of the activity of the undertaking, declaring of the debtor in bankruptcy and suspension of the proceedings because of insufficiency of the assets for covering the expenses for the proceedings.

Therefore, a necessary condition if not a sine qua non for the origination and exercise of the rights under Article 4 of the *Guaranteed Employee Receivables in case* of *Employers' Bankruptcy Act is the existence of a court decision having the force of res judicata for opening of employer bankruptcy proceedings*.

The Committee also asks what is the average time that elapses between the filing of claims and the actual payment of the sums.

The proceedings for granting the secured claims begins in the territorial division (TD) of the National Social Security Institute (NSSI), where the application and declaration form is filed, by examining the documents attached to it and comparing them against the data from the Register of Employment Contracts, the Register of Insured Persons and the the Register of Persons with Paid Benefits for Temporary Disability.

Based on these data and after an assessment, TD of NSSI prepares a draft order for granting or refusing to grant the guaranteed claim within 14 days of receipt of the application and declaration form, which is sent within the same period to the Director of

the Fund. The Director is the authority of law, which, after considering all the facts and circumstances established and familiarisation with the available documentation, issues an order granting or refusing to grant the guaranteed claim.

The Director of the Fund issues the order within two months from the date of registration in the commercial register of the court decision for opening of insolvency proceedings and sends it to the relevant TD of NSSI for having it served to the person.

The territorial divisions of NSSI pay the guaranteed receivables to the personal current or savings demand account specified by the person, within 7 days of receipt of the order of the Director of the Fund for granting the secured receivable.

APPENDIX

Decisions – age discrimination

Decision No. 10734/1.09.2014 of SAC in administrative case No. 1463/2014, VII division, reporting judge Ivan Radenkov
art. 208 APC
art. 4 PDA
art. 7, para. 1, it. 6 PDA
art. 12, para. 1 PDA

For discrimination in the meaning of PDA to exist, all constituent elements of the applicable special legal norm have to be realised. Wrongful differentiated approach to a certain person or group of persons should be linked to an element under art. 4 PDA. For these reasons, it is not sufficient to establish unfavourable treatment of a person or persons, it is also necessary to prove further that this disadvantage is made on any of the grounds set out in art. 4 PDA and there also should be a direct and causal link between the adverse attitude, unfavourable treatment in this case, and the reason for it, which in any case should be expressed in an element cited in art. 4 PDA.

The provision of art. 12, para. 1 PDA prohibiting employers to put age requirements expressly excludes this prohibition in the cases under art. 7, para. 1, it. 6 PDA.

Proceedings are brought under Article 208 et seq. of the Administrative Procedure Code (APC).

The proceedings were initiated following an appeal in cassation lodged by Dragomir Atanasov Peev from Nicosia, Cyprus, against Decision No. 7338/26.11.2013 in administrative case No. 9701/2013 on the docked of the Administrative Court of Sofia. Reasons are given for incorrectness of the judicial act due to breach of the material law consisting in that the court of first instance has issued a decision which is not in line with the European legislation. Repealing of the decision is sought, with reconsidering the dispute on the merits and dismissing the appeal against Decision No. 208/09.12.2013 of the Commission for protection against discrimination (CPD / Commission). Expenses for stamp duty and forensic litigation expenses are claimed in the case without specifying a particular amount.

The defendant – the minister of justice, through his procedural representative legal advisor Vasilieva, contests the appeal in cassation in a written reply, seeking maintenance if the appealed decision in force. Legal advisor fee is claimed.

The defendant – CPD, through its procedural representative, seeks upholding of the cassation appeal with repealing of the decision of the first instance court and, by re-examining the dispute, repealing the challenging of CPD's decision concerned.

The representative of the Supreme Administrative Prosecutor's Office gives reasoned opinion that the cassation appeal is unfounded.

The Supreme Administrative Court, Seventh Panel, finds the cassation appeal to be admissible on the grounds of having been filed in due time by the proper party. Examined on its merits, the appeal is unfounded for the following reasons:

Proceedings before the Commission are instituted on an application by the applicant in cassation, in which he complains about discrimination on the grounds of "age" and "personal situation". Dragomir Peev is a retired sergeant from the reserve of the Bulgarian Army. The discriminating attitude towards him consisted in that he was not admitted to the competitions for vacant positions of category "F" in Directorate

General "Execution of Penalties" (DGEP) and Directorate General "Security" (DGS) announced with orders of the minister of justice because the Rules on the terms and procedure of entry into service in DGEP and DGS of MJ lay down that candidates should be up to 40 years of age unless they are current or previous employees of these directorates or of MoI.

In its decision, CPD holds that the parties do not dispute that it. 2.2.1 of Section I of the Rules on the conditions and procedures for entry into public office in Directorate General "Execution of Penalties" and Directorate General "Security" at MJ represents a form of unequal treatment in terms of age. In that light and having examined whether same is objectively justified, CPD has held that the measure introduced is not proportionate to the legal purpose sought because the introduced maximum age for holding positions in the respective administrative structures is 60 years and that the initial professional training for holding positions in DGEP and DGS continues 6 weeks, therefore a person who has reached the age of 40 will be able to perform his/her obligations in the course of 20 years. In the light of everything stated, the Commission has found that there is direct discrimination in terms of age with comparable similar circumstances because the persons who have come of the age of 40 are objectively unjustifiably given more unfavourable treatment within the groups of candidates for positions in DGEP and DGS who are not former and current employees of the respective administrative structures of MoI.

With the decision contested before the present instance, the Administrative Court of Sofia City repealed Decision No. 208/09.12.2013 of CPD, five-member extended panel, which found that it. 2.2.1 of Section I of the Rules on the conditions and procedures for entry into public office in Directorate General "Execution of Penalties" and Directorate General "Security" at MJ was a form of direct discrimination on the grounds of "age" within the meaning of art. 4, para. 2 of PDA and recommended to the Minister of Justice to issue an order to cancel the quoted provision of the Rules so that the age limit for entry into government service in the relevant administrative structures be abolished or amended.

To render this legal result, the Court drew the conclusion that the contested decision of CPD was issued by the competent authority and in the prescribed form, in compliance with the administrative and procedural rules, but same is in conflict with the substantive law.

The contested decision is correct.

Relevant to the substantive law is the conclusion of the administrative court that for discrimination in the meaning of PDA to exist, all the constituent elements of the applicable specific rule have to be realised. The wrongful differentiated approach to a certain person or group of persons should be linked to an element under art. 4 of PDA. For these reasons, it is not sufficient to establish unfavourable treatment of a person or persons, and it is necessary to prove further that this disadvantage is made on the basis of any of the elements set out in art. 4 of PDA and there should be a direct and causal link between the adverse attitude, the unfavourable treatment in the case in point, and the reason for it, which in any case should be expressed in an element cited art. 4 of the Act.

The court correctly held on the basis of established facts that in this case the provision of it. 2.1.1 of Part I of the Rules in point is not discriminatory in terms of age.

According to the provision of art. 7, para. 1, it. 6 of PDA, fixing of a maximum age for recruitment which is associated with the need for training to occupy the post or the need for a reasonable period of employment before retirement does not constitute discrimination, provided that it is objectively justified by a legitimate aim and the means of achieving it do not exceed what is necessary.

In this case, setting such a requirement in the tender conditions does not lead to a conclusion for unfavourable treatment of Dragomir Peev on the grounds of "age" compared to the treatment that was given or would have been given to others in comparable circumstances, insofar as this condition is set for all candidates for the competition and is not a personal requirement for the cassation applicant. On the other hand, in view of the provision of art. 7, para. 1, it. 6 of PDA, setting the age requirement under the specified conditions in the text is explicitly excluded by the legislator as a form of discrimination. At the same time, the provision of art. 12, para. 1 PDA which prohibits employers to stipulate age requirement explicitly excludes from this prohibition the cases under art. 7 it. 6 of PDA.

The administrative court correctly held in the appealed decision that Dragomir Peev applied for a job, for which the Rules on the conditions and procedures for entry into public office in Directorate General "Execution of Penalties" and Directorate General "Security" at the Ministry of Justice set a specific requirement for the candidates for positions for which compulsory initial professional training is required to be not older than 40 years, that in the case in point he was not subjected to discrimination. Substantiated is the conclusion of the court that this condition is related to the age limit up to which this service can be implemented - 60 years. In view of that it is correctly held that in setting the age limit at 40 years, in the case in point the minister in the conditions of operational discretion conferred on him in accordance with the rule of art. 12, para. 1 of PDA and art. 7, para. 1, it. 6 of PDA has carried out an assessment of the need of a reasonable period of holding office before retirement and of creating career development of employees which is also associated with serving a certain period of time holding the respective position.

In this sense is also the provision of art. 6, § 1, c) of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. According to the Directive, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. Such differences of treatment may include the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

In the case in point, the findings of the court are in accordance with the cited norm, they are based on established facts and take into account the specifics of the position for which the cassation applicant applied, as well as the initial training for the same.

The cassation grounds pointed out are missing and the contested decision, which is valid, acceptable and correct, should be upheld.

In view of the outcome of the litigation and the explicit and timely request made by the legal representative of the Minister of Justice for the award of costs, the cassation complaint should be ordered to pay to the Ministry of Justice legal adviser remuneration in an amount of BGN 300 for the cassation instance.

For the reasons outlined and on the grounds of art. 221, para. 2 of APC, the Supreme Administrative Court, Seventh Division,

HAS ADOPTED THE FOLLOWING DECISION:

Decision No. 7338/26.11.2013 in administrative case No. 9701/2013 on the docket of the Administrative Court of Sofia City IS HEREBY UPHELD.

Dragomir Atanasov Peev, having PIN **********, address Cyprus, Nicosia, 6, Michail Kashalu, floor 2, IS HEREBY ORDERED to pay to the Ministry of Justice BGN 300 (three hundred leva) in costs in the case.

The decision is final.

Decision No. 11457/20.11.2007 of SAC in administrative case No. 9433/2007, panel of 5, reporting judge Todor Todorov

art. 4, para. 1,
art. 7, para. 1, it. 12 PDA,
art. 21 HEA (Higher Education Act)

Proceedings under art. 208 et seq. of APC.

The proceedings were initiated following an appeal in cassation lodged by the Association for European Integration and Human Rights Foundation from Plovdiv against Decision No. 6738/28.06.2007 in administrative case No. . 780/2007 on the docked of the Supreme Administrative Court, Division Five, which repealed the complaint and against Decision No. 53/14.11.2006 of the Commission for Protection against Discrimination. Reasons are given for lack of justification and breach of the material law in relation to the application of art. 4, para. 1 and art. 7, para. 1, it. 12 of the Protection against Discrimination Act (PDA).

The defendant parties in the appeal – the Commission for Protection against Discrimination, Sofia and the Minister of Education and Science considered the same unfounded.

Sofia University "St. Kliment Ohridski", Sofia, does not take a view.

The prosecutor at the Supreme Administrative Prosecutor's Office concludes that the the cassation appeal is unfounded.

The cassation appeal was filed in due time by the proper party and is procedurally admissible. Examined on the merits of the grounds listed therein and after official validation for eligibility and compliance of the contested decision with the substantive law it is considered to be unfounded.

In dismissing the challenge, the Supreme Administrative Court, Fifth Division, held that the intake of students in higher education institutions on the basis of quotas for men and women in higher education is determined by the higher education institutions themselves (in this case of the Academic Council of Sofia University "St. Kliment Ohridski") pursuant to art. 21, para. 1, it. 3 of the Higher Education Act and is consistent with the balanced participation of both sexes in education.

It is found in the case that the proceedings before the Commission for Protection against Discrimination were initiated on a signal from the Foundation with charitable status "Association for European Integration and Human Rights", Plovdiv, according to which "quotas" allocated annually from the Sofia University "St. Kliment Ohridski" for the study of "Bulgarian Philology", full-time training, create discriminatory treatment of men in the application, due to the lower number of places allocated to them and of women in the ranking due to their high minimum grades.

With Decision No. 53/14.11.2006, the Commission for Protection against Discrimination, Second Specialized Panel, found that the practice of university admissions of students on a quota principle in the envisaged area of study does not constitute discrimination within the meaning of art. 4, para. 1 of the Protection against Discrimination Act. The Commission did not grant the application for imposition of coercive administrative measures.

According to art. 9, para. 3, it. 6 of the Higher Education Act, the Council of Ministers approves annually the number of enrolled students in the studies for the educational and qualification degrees without setting quotas. Setting quotas is within the powers of the higher education institutions in connection with their granted academic autonomy (art. 53, para. 4 of the Constitution of the Republic of Bulgaria). The concept of academic autonomy is clarified in the provision of art. 19, para. 3 of the Higher Education Act and includes academic freedoms, academic self-government and inviolability of the territory of the university.

Academic freedom consists in the freedom of teaching, freedom of scientific research, freedom of creativity and freedom of learning while academic self-government defined by the provision of art. 21 of the HEA covers the powers listed therein, including the right of self-determination of the conditions for admission and of the forms of training of students.

The nature and purpose of the introduced difference in the admission of students at Sofia University "St. Kliment Ohridski", "Bulgarian philology", is to ensure balanced participation of women and men in teaching it. It constitutes a necessary measure in the field of education. According to art. 7, para. 1, it. 12 of the Protection against Discrimination Act, measures in education and training to ensure a balanced participation of women and men do not constitute discrimination as far as such measures are necessary. Differential treatment in this case is not dictated by the assessment of different intellectual potential; it is justified by objective criteria related to the different biological development of the two genders, by the need to prevent the complete feminization of the specialty and the occupation afterwards. It is determined by the peculiarities of the training, the nature of future work and the social significance and status in view of the socio-economic conditions and needs in the country.

Lead by the above considerations, the Supreme Administrative Court, sitting in a panel of five,

HAS ADOPTED THE FOLLOWING DECISION:

Maintains in force Decision No. 6738/28.06.2007 in administrative case No. 780/2007 of the Supreme Administrative Court, Fifth Division.

The decision is not appealable.

Decision No. 1411/28.01.2011 of SAC in administrative case No. 10908/2010, VI Division, reported by presiding judge Alexander Elenkov

art. 234 LC
art. 404, para. 1, it. 4 LC
art. 7, para. 1, it. 5 PDA.

An act and deed of a party to a contract is different from the act and deed of an administrative head, even when this head is a body of private administration.

"The employer is not under an obligation and decides alone whether to fund or not," but when it decides to finance the training for improvement of the qualification, this decision must be the same for all employees.

Employees are required to perform their job accurately and in good faith, and the employer is obliged to pay them the agreed salary by the statutory deadlines regardless of whether some of them have other income. In carrying out this obligation the employer does not have a subjective right recognized by the rule of law to balance at its discretion the income of employees, creating benefits for those who it believes that "are in a worse financial situation." The cases where the different treatment of persons is not considered discrimination are listed in the provision of art. 7, para. 1 PDA.

Proceedings under art. 208 et seq. of the Administrative Procedure Code (APC).

Instituted on cassation appeal of the medical institution "Diagnostics and Consultation Centre 1 Sliven" EOOD, Sliven, lodged by their procedural representative attorney Milena Manginova from the same city, authorised with a power of attorney, against decision No. 100/30.06.2010 in administrative case No. 142/2010 of the Administrative Court of Sliven.

The cassation appeal was filed within the period under art. 211, para. 1 APC by the party under art. 210, para. 1 APC against a judicial decision which is appealable in cassation and thus the appeal is admissible. Examined on the merit, the appeal is unfounded.

The data in the file show that with Act No. 8/20.04.2010 the Chief Inspector at Directorate "Labour Inspectorate" – Sliven, on the basis art. 404, para. 1, it. 4 of the Labour Code (LC), suspended Order No. 7 of 16.02.2010 with which the governor of the applicant hospital ordered: a/ the costs required to support vocational training and certificates of competency of staff in pre-retirement age to be borne by the employer; b/ the costs required to support the professional qualifications and licenses of the pensioners working at "DCC -1 Sliven" to be borne by the persons concerned (i. e. at the expense of the working pensioners themselves). To order the suspension, the Chief Inspector held that this order was contrary to art. 8, para. 3 LC because it contained a discriminatory element in respect of age.

With the above decision the Administrative Court of Sliven rejected as unfounded the objection to the dismissal of the order. To deliver this result, the court held that in addition to art. 8, para. 3 LC it also contradicted art. 15, para. 1 of the Protection against Discrimination Act (PDA) according to which the employer provides employees with equal opportunities regardless of the grounds under art. 4, para. 1 (one of which is "age") for vocational training and vocational training and retraining, as well as for professional development and promotion in rank or position, applying the same criteria when evaluating their activities.

The arguments in the cassation appeal are incorrectness of the court decision due to violation of the law and unreasonableness.

According to the legal representative of the medical institution – applicant, the order concerned does not affect the right of workers to receive vocational training, the way of financing the organised training courses for that. According to art. 234 of the Labour Code (LC) the employer is not required to and decides himself whether to finance or not, the criteria he is guided being the possibilities of the enterprise, the credibility of the employees and their suitability for long-term agreement. In the case in point the employer had decided to finance the training and improvement of the professional qualification of their employees based on criteria for their suitability for long-term agreement. Not least because the decision whether to finance retraining was made and

based on the fact that working pensioners are in a more favourable financial position than non-pensioners.

These arguments are unfounded.

This panel of the Supreme Administrative Court fully shares the opinions expressed in the contested act and the motives of the first-instance judicial decision. An argument derived from the norm of article 234 LC has to be added, in the meaning that the will of a party to the contract is different from the will of an administrative head, even when this head is a body of private administration. It is true that "the employer is not required to, and decides himself whether to fund or not," but when you take the decision to fund training for qualification, this decision must be the same for all employees. The age limit with preserved performance of employees or "the reliability of employees and their suitability for long-term agreement" is a circumstance that is not subjected to the man and his reason therefore the life expectancy and the performance of a man cannot be estimated. Illegitimate is the argument that "working pensioners are in a more favourable financial position than non-pensioners."Employees are obliged to perform their job accurately and in good faith, and the employer is obliged to pay them the agreed salary by the statutory deadlines regardless of whether some of them have other income. In carrying out this obligation the employer does not have a a subjective right recognised by the rule of law to balance at his discretion the income of employees by creating privileges for those whom he believes “to be in a worse financial situation”. The cases in which the different treatment of individuals is not regarded as discrimination are specified in the provision of art. 7, para. 1 PDA. The case in point does not belong there. More specifically, it cannot be classified either as an exception under art. 7, para. 1, it. 2 PDA, or as an exception under art. 7, para. 1, it. 5, second sentence of the same act because those exceptions have to be objectified by a legitimate purpose and the means of achieving it must not exceed what is necessary. The proceedings in the Administrative Court of Sliven do not establish and the complainant does not specify the legitimate and proportionate objective pursued by him. In the written opinion presented in the cassation instance and having the nature of written defence the procedural representative invoked the reason that the case in point represented an exception under art. 7, para. 1, it. 5 PDA (granting certain advantages linked to employment), referring implicitly to the paper “The notion of discrimination in employment relations” (by senior associated professor Ivaylo Staykov, New Bulgarian University), but failed to explain the essence and the legal prerequisite of the objective pursued by him, therefore the statement that the objective is legitimate and proportionate cannot be verified.

Led by the above considerations, this panel of the Supreme Administrative Court, Sixth Division,

HAS ADOPTED THE FOLLOWING DECISION:

decision No. 100 / 30.06.2010 in administrative case No. 142/2010 of the Administrative Court of Sliven is hereby UPHELD.

The DECISION is not appealable.

Decisions – compensations on an equitable basis

DECISION

No. 192
Sofia, 25.06.2014

In the name of the people

The Supreme Court of Cassation of the Republic of Bulgaria, Civil College, Fourth Division, in an open hearing on the fifteenth day of May the year two thousand and fourteen, sitting in a panel of:
PRESIDING JUDGE: SVETLA TSATCHEVA
MEMBERS: ALBENA BONEVA
BOYAN TSONEV
with clerk of court Stefka T, having heard civil case No. 5663/2013 reported by Judge Albena Boneva, in order to issue a decision, took into consideration the following:

The proceedings are under art. 290 CPC, instituted on a cassation appeal filed by F.A.S. through attorney E.F. from the Bar Association of D. against appellate decision No. 219/26.06.2013 of the District Court of Gabrovo issued in civil case No. 209/2013.
The cassation appeal is allowed with ruling No. 307/05.03.2014 as regards the qualification of the claim of discrimination damages which qualification is established pursuant to Chapter IV, Section I of the Protection against Discrimination Act (PDA) with a decision of the Commission for Protection against Discrimination (CPD); as regards the legal force of CPD's decision and whether the court revisits the question of has the discrimination claimed been committed where the parties to a civil dispute have participated in the proceedings before CPD; as regards the responsibility of the claimant to refund the costs to the opposite party if the claim tried under PDA in relation to art. 75, para. 2 PDA is refused.
Cassation appeal is allowed on the first two questions because they have been solved in conflict with decision No. 73/12.06.2013 in civil case No. 311/2011 by IV Civil Division of the Supreme Court of Cassation. The present panel shares the interpretation given in the cited legal act pursuant to art. 290 CPC, that in the cases where the discriminatory act is established in proceedings pursuant to Chapter IV, Section I of PDA by the Commission for Protection against Discrimination, by the respective administrative court accordingly where CPD's decision is appealed, the claim of damages resulting from the established discriminatory act is qualified under art. 74 PDA. The contractual claim is within the competence of the general or administrative courts /art. 74, para. 1 and para. 2 PDA/, depending on the type of relations about which the discriminatory treatment was committed – in this sense also Ruling No. 12/15.02.2013 of a mixed panel of five of the Supreme Administrative Court and the Supreme Court of Cassation in administrative case No. 2/2013 г.
The protection laid down in PDA – in court and before the Commission for Protection against Discrimination – these are alternatives which the persons affected by discriminatory treatment can choose from. The purpose of both is to establish and sanction the fact of discrimination; they are relevant to all cases of discriminatory treatment and for all legal subjects. The difference is that the Commission for Protection against Discrimination is not competent to rule on the type and amount of the damages

incurred as a result of the discriminatory act or to compensate the victim. The claim for compensation can be lodged only in court – the respective administrative court for damages as a result of discriminatory acts or the bodies of the state power and the general civil courts for damages resulting from relations of equality of the subjects.
The financial compensation claim can be lodged in court (administrative or general) together with the claim for establishing the violation under art. 71, para. 1, it. 1 PDA, in which case there will be objective cumulative joining of claims and the court will establish also the existence of discriminatory behaviour. The claim for damages could be lodged later when the decision under art. 71, para. 1, it. 1 PDA has become enforceable – the claim is examined according to the general procedure and it has as legal grounds art. 74 of PDA.
In cases where discrimination is established in proceedings under Ch. IV, Section I of PDA - by the Commission for Protection against Discrimination or by an administrative court through an appeal, the court pursuant to the action for damages under art. 74 PDA - administrative or civil, does not establish again whether discrimination has been committed, by whom and against whom, and assessed only whether damages have been caused to the injured party, what they are, whether they are a direct consequence of the discriminatory violation and what the amount of compensation is.
Regarding the responsibility of the applicant to reimburse to the counterparty the legal expenses in case the claim under art. 74 of the Discrimination Act is rejected, in the grounds of decision No. 871 / 20.01.2011 in case No. 1452/2009 the Supreme Court of Cassation, IV Civil Division has accepted that if according to art. 75, para. 2 PDA stamp duty is not charged for judicial proceedings held pursuant to the law and expenses are charged to the budget of the court, the applicant does not owe to the defendant amounts pursuant to art. 64 CPC revoked, respectively art. 78 CPC, regardless of the outcome of the dispute. It is assumed that the norm of art. 75, para. 2 PDA is special in terms of art. 78 CPC and from this it is inferred that amounts of expenses incurred for legal representation of the party in whose favour the dispute is resolved cannot be awarded. In this case, the appellate court ruled the opposite of the interpretation given - after having rejected the claims of F.S., it sentenced her to pay to the defendants the legal expenses incurred by them.
The panel of the Supreme Court of Cassation finds that the solution in the appealed appellate decision is correct.
The norm of art. 75, para. 2 PDA is analogous art. 83 CPC, art. 359 LC, § 35 ALOUA regarding the claim under § 4i ALOUA, art. 7, para. 1, sentence 3 of RNRPA, etc., under which provisions the applicants do not pay state taxes in the case, and the expenses are charged to the budget of the judiciary branch. The rules regulate the relations of the applicants with the fisc but do not exempt them from the obligation to reimburse to the opposing party to the dispute the expenditure incurred, when the action is wholly or partially unfounded. These costs of the party in whose favour the dispute is resolved, only because such party had the procedural position of the defendant, can not remain for its own account and are not refunded to the party by the state. The meaning of the regulation in art. 78 CPC is the compensation of each of the parties to the case for the funds by which such party's material sphere is reduced by the judicial proceedings, once the court has ruled on the dispute in its favour, and even without such a decision the defendant is entitled to such compensation for the legal costs if his behaviour is not the cause for instituting the proceedings - art. 78, para. 2 CPC. The norm of art. 75, para. 2 PDA facilitate access to justice for victims of discriminatory acts, but does not provide for an exception to the general principle for reimbursement of the amounts by which the assets of the defendant have been decreased due to unfounded claims of the plaintiff.

Regarding the cassation complaints:
The appellant claims faultiness of the attacked judicial act due to conflict with the material law and permitted material breached of the judicial rules.
Defendant in cassation “E.S.”, [place] and B. D. G. represented by attorney E. K., replied within the period specified in art. 287, para. 1 CPC that the appellate decision was correct. Detailed rationale is given in written notes reported in open court.
Examined in substance the cassation appeal is partially founded.
F.A.S. lodged claims against the defendant “E.S.”, [place] and the school headmaster B.D.G. claiming joint payment of compensations for financial and non-financial damages caused to her as a result of direct discrimination in the dismissal of S. from the position of teacher of Bulgarian language and literature in the primary school. The discriminatory act was established by the Commission for Protection against Discrimination in the presence of the employer and the employee – the director G.
Claims were rejected by the appellate instance on the grounds of “art. 45, in relation to art. 49 PDA, in relation to art. 71, para. 1, it. 3 and art. 74 of PDA”.
The court held that in dismissing S. the director of the school has not committed discrimination against her. It is held that the decision of the Commission for Protection against Discrimination (CPD) does not have the force of res judicata and cannot be grounds for lodging the claim. The claims are rejected and the plaintiff is sentenced to pay to the defendants the legal costs on the grounds of art. 78, para. 3 CPC.
The official verification for validity and admissibility of the judicial decision conducted by the cassation instance did not find such defects.
Contrary to the mandatory jurisprudence under art. 290 CPC and the interpretation accepted by the present panel, the appellate court qualified the claims incorrectly. The manifestation of discrimination is tort act, but in the existence of effective special provisions in the PDA the common provisions under the OCA apply subsidiary. The employer’s liability for discrimination in exercising the right to work is not identical to that under art. 49 OCA as the appellate court held. According to art. 18 and 19 of PDA the employer is obliged to take effective measures to prevent all forms of discrimination in the workplace and in default shall be liable under this law for acts of discrimination, carried out in the workplace by his employee. Similar to the case under art. 49 OCA, the liability for damages caused by third party acts is regulated, but the employer's liability under art. 19 PDA is personal and similar in nature to that under art. 47 and art. 48 of OCA. The employer, in violation of the general rule under art. 18 PDA, has no right of recourse against the direct perpetrators because he is not liable on their behalf. The damaged may choose to file a claim for compensation against the employer and / or the persons who have manifested discrimination - art. 74, para. 1 PDA. The the defendants are jointly and severally liable.
The appellate court, contrary to the above authorizations under art. 290 CPC, judged alone whether the employer through its employee B. D. Manifested discriminatory treatment of F.S. at her dismissal.
Finally, the appellate decision is incorrect, it should be annulled and the dispute should be resolved in substance by the cassation instance.
With the decision under art. 65 PDA, CPD found that when the employment contract between F.A.S. and the defendant "E.S."[place] was terminated with an order of the school headmaster B.D.G., there was direct discrimination on the grounds of the "education" element. The findings regarding the committed breach, the identity of the offenders and the affected person should be respected by the court in the claim legally based on art. 74, para. 1 PDA. This decision, however, does not establish and does not bind any court with the compensation of the damages suffered by S. – whether such

damages exist, what they are, whether they are in direct causal relation with the discriminatory treatment, what the amount of their fair redress is.
Concerning the claim for financial damages in the amount of 5850.23 BGN - lost income from salary for 12 months, including insurance and any unemployment benefit, there is no direct causal relation between the discriminatory act and the damage - lack of labour income. It is true that the conditions under which F.S. was placed in order to apply for termination of her employment and the termination of same are recognized as discriminatory actions, but the dismissal is not cancelled. During the period relevant to the dispute, termination of employment is a fact. Revocation of dismissal is done in particular according to the procedure established by the legislator – by the employer or through an action under art. 344, para. 1, it. 1 LC. S. had a legal opportunity to initiate action under art. 344, para. 1, it. 1 LC, including on grounds of alleged discriminatory treatment, and to bring, in the same proceeding or in other independent proceedings to bring the claims under art. 74, para. 1 PDA. For the reasons outlined, the claim for payment of compensation for property damages should be rejected.
Regarding the claim of non-financial damages in an amount of 10 000 BGN:
It is established from the evidence collected in the case that S. experienced negative emotions, feeling of tension and anxiety at the termination of the employment contract. There are non-financial damages in relation to the discriminatory act established by CPD.
In determining the cash compensation, account has to be taken of the specific circumstances in which the act was committed, the damage, its intensity, the standard of living in the country as a basis of the cash equivalent of the non-financial damage caused, the reference created by by the judicial practice and relevant to similar cases, because social equality is most purely manifested in the field of non-financial values.
The court, having assessed the above circumstances, finds that the compensation for the non-financial damages caused to S. Should be set at 1500 BGN on an equitable basis.
For the balance up to the claimed amount of 10 000 BGN the claim is unfounded and should be rejected.
The claim for awarding compensation in an amount of the statutory interest, starting from the application filing date - 22.11.2012, until final payment of the principal, pursuant to art. 86, para. 1 of OCA is founded.
The plaintiff S. is entitled to the legal costs in proportion to the honoured amount of the claim and the opposing parties are entitled in proportion to the not honoured portion of the claims, including the portion for which the proceedings were terminated due to waiver of the claim for financial damages for the amount in excess of 5850,23 BGN. The claim is for 6600 BGN.
S. has authorised the law office “F., R. and Partners” and attorney E.F. to represent her in the proceedings.
Evidence of payment of attorney fee in an amount of 1500 BGN by the client to attorney F. Is presented.
The amounts for travel and daily mission allowance are not legal costs or attorney fee, therefore they cannot be claimed under art. 78 CPC.
Attorney F.’s request for determining and awarding to the law office of an attorney fee under art. 38, para. 1, it. 2 of the Bar Act is also unfounded.
As seen from the evidence discussed above, defense counsel is not provided free of charge. This conclusion is not altered by the fact that the above 150 BGN paid, as evident from the records, are for the drafting of the application as recorded, are preparing the application. A second power of attorney is presented, with identical content regarding the authorization transaction, in which, outside the authorization text, “art. 38,

para. 1, it. 2 BA" is written in the upper right side of the document, above the text "POWER OF ATTORNEY. This document does not certify existence of the grounds under the cited legal norm or that trustor and trustee agreed on the provision of counsel free of charge.
Finally, defendants are to pay to S. 13,50 BGN under art. 78, para. 1 CPC.
The defendants "E.S.", [place] and B. D. G. paid total attorney fee for representation in the proceedings in all instances, in an amount of 1150 BGN, including 600 BGN for representation in the Supreme Court of Cassation. F.S., through attorney F., made an objection for excessiveness of the amount paid in the cassation instance as attorney fee by the defendants. The objection is unfounded. Each one of the two defendants, unless stated otherwise, paid 300 BGN for procedural representation in the Supreme Court of Cassation. This amount does not exceed the minimum amount specified in art. 9, para. 3 of Ordinance No. 1 on the minimum amounts of attorney fees, therefore the grounds under art. 78, para. 5 CPC for reduction of the amount payable by S. under art. 78, para. 3 CPC do not exist. She has to pay to the defendants total 1046 BGN in legal costs for all instances.
With the ruling thus issued as an ultimate result, the appellate decision should be repealed only in the portion where the claim for award of compensation for financial damages under art. 74, para. 1 PDA is rejected for the amount of 1500 BGN together with the statutory interest, starting from the application filing date, and in the part regarding the legal costs.
GUIDED by the above motives, the panel of Fourth Civil Division of the Supreme Court of Cassation

HAS ADOPTED THE FOLLOWING DECISION:

Appellate decision No. 219/26.06.2013 of the District Court of Gabrovo issued in civil case No. 209/2013 is hereby REPEALED in the part where the claim for awarding compensation for financial damages under art. 74, para. 1 PDA is rejected for the amount of 1500 BGN together with the statutory interest, starting from the application filing date and in the part for the legal costs and the following is hereby RULED instead:
The defendants "E.S.", [place] and B.D.G. are hereby SENTENCED jointly and severally to pay to F.A.S. the amount of 1500 BGN in compensation for the non-financial damages caused to her and established with Decision No. 154/14.06.2012, direct discrimination under art. 74, para. 2 PDA, the statutory interest starting from 22.11.2012 until the final payment of the principal, and 13,50 BGN in legal costs under art. 78, para. 1 CPC.
F.A.S. is hereby SENTENCED to pay to the defendants "E.S." [place] and B.D.G, a total amount of 1046 BGN in legal costs incurred by them in the proceedings in all instances, pursuant to art. 78, para. 2 and 3 of CPC.
Appellate decision No. 219/26.06.2013 of the District Court of Gabrovo, issued in civil case No. 209/2013 is hereby UPHELD in its other part.
The DECISION is not appealable.

PRESIDING JUDGE:

MEMBERS:

Draft Act on Equality between Women and Men

Art. 1. This act aims to ensure the equality between women and men by regulating the bodies and mechanisms of the state policy for equality between women and men.

Art. 2. The state policy for equality between women and men shall be underpinned by the principles of:

1. Equal opportunities for women and men in all spheres of social, economic and political life;
2. Equal access of women and men to all resources in the society, equal treatment of women and men and non-discrimination and non-violence based on sex;
3. Balanced representation of women and men in all decision making bodies.

Art. 3. The state policy for equality between women and men shall be pursued through:

1. Integrating the equality between women and men in all national, regional and local politics, strategies, programmes, plans, legislation;
2. Implementing temporary encouraging measures;
3. Horizontal cross-sectoral approach;
4. National institutional mechanism for cooperation between central and local bodies of the executive branch and with the civil society;
5. Consistent and sustainable resource and financial support of the bodies of and the policy for equality between women and men.

Art. 4. The Council of Ministers shall set the state policy for equality between women and men and shall approve a National Strategy for Equality between Women and Men and plans for its implementation.

Art. 5. (1) A National council on Equality between Women and Men shall be operational at the Council of Ministers. It shall be the body for consultations, cooperation and coordination between central and regional bodies of the executive branch and the civil society.

(2) The National Council shall comprise representatives of:

1. ministries, state and executive agencies and other bodies set up with an act;
2. representatives of the national employee organisations;
3. representatives of the national employer organisations;
4. the National Association of Municipalities in the Republic of Bulgaria;
5. non-profit legal entities having scope of business in accordance with the priorities of the state policy for equality between women and men.

(3) The National council on Equality between Women and Men shall be chaired by the Minister of Labour and Social Policy.

(4) The drafts of strategic and regulatory acts containing provisions on equality between women and men shall be introduced in the Council of Ministers after obtaining the preliminary opinion of the National council on Equality between Women and Men.

(5) The Council of Ministers shall approve Rules on the structure, organisation and operation of the National Council on Equality between Women and Men.

Art. 6. The Minister of Labour and Social Policy shall direct, coordinate and

control the implementation of the state policy for equality between women and men by:

1. Designing, participating in the discussion and making proposal for approval and/or amendment of regulatory acts relevant to the equality between women and men;
2. Organising and directing the work of the National Council on Equality between Women and Men;
3. Coordinating the design, implementation and reporting of the National Strategy for Equality between Women and Men and the plans thereto;
4. Organising and coordinating the design of a system for monitoring of equality between women and men;
5. Organising the development and maintenance of National Information System for monitoring of equality between women and men in the Republic of Bulgaria and coordinating the drafting of a report on the equality between women and men in the Republic of Bulgaria;
6. Providing methodological assistance to the bodies of the executive power regarding for implementation of the policy for equality between women and men;
7. Representing the State in international organisations and programmes in the field of equality between women and men;
8. Directing and coordinating the participation in national and international programmes and projects for equality between women and men, including in cooperation with other public authorities and organisations;
9. Keeping contacts with similar specialised state bodies in other countries and with international organisations in the field of equality between women and men.

Art. 7. (1) The bodies of the executive branch shall designate officer/s to act as coordinator/s on equality between women and men.

(2) The coordinators shall:

1. Participate in the design and implementation of the national policy for equality between women and men;
2. Participate in the design and sector and local policy and programmes in terms of equality between women and men;
3. Participate in the development of gender-based impact assessment of regulatory acts, strategies and programmes proposed or approved by the respective body of the executive branch;
4. Participate in the design of the National Strategy and action plan for equality between women and men in the area of competence of the respective bodies of the executive branch;
5. Coordinate the implementation of the measures within the competence of the respective body of the executive branch and participate in the drafting of annual reports on equality between women and men;
6. Participate in the development of qualitative and quantitative analyses of equality between women and men in the respective are of competence of the institutions;
7. Participate in monitoring and evaluating the implementation of the National Strategy and its implementing action plans;
8. Coordinate the collection and dissemination of information and best practices, provision of data on equality between women and men which are within the competence of the respective body of the executive branch;

9. Participate in the organisation of and in trainings on equality between women and men;
10. Perform such other functions in the field of equality between women and men as may be assigned by the respective body of the executive branch.

(3) The functional duties of the designated officers on equality between women and men shall be specified in their job description or with an order of the civil service appointing body.

Art. 8. In pursuing the state policy for equality between women and men, the state bodies shall collect, register and process gender-based data for the purposes of the National Information System under art. 6, it. 5.

Art. 9. The bodies of the executive branch shall conduct ex-post impact assessment of the integration of equality between women and men in their areas of competence and scope of work.

Art. 10. (1) The state policy for equality between women and men shall be implemented by the regional administrations, the bodies of local self-government in cooperation with the territorial units of ministries, state and executive agencies and other bodies set up with an act, representatives of employee and employer organisations, and other organisations;

(2) Commissions on equality between women and men shall be set up by the decision of the regional development councils.

(3) The Commission on Equality between Women and Men at the regional development council shall be chaired by the regional governor or a representative of the regional administration authorised by the regional governor.

(4) The Rules on the Structure and Procedure of the Commission on Equality between Women and Man shall be approved by the regional development councils.

(5) The Commission on Equality between Women and Men at the regional development council shall comprise representatives of:

1. the regional administration and the municipalities on the territory of the region;
2. the territorial units of ministries and other state bodies;
3. structures of the representative employer and employee organisations;
4. non-profit legal entities whose activity is connected with issues of equality between women and men;
5. other territorial structures.

(6) Commissions on Equality between Women and Men shall submit information on their work to the secretariat of the National Council on Equality between Women and Men.

Art. 11. The Commission on Equality between Women and Men shall be guided in its work by the priorities of the regional development strategy and the regional, district and municipal development plans, as well as by the priorities of the national strategic and planning documents on equality between women and men.

Art. 12. Organisational and technical support to the Commission on Equality between Women and Men at the regional council shall be provided pursuant to the Rules on the Structure and Procedure of regional and district development councils.

Art. 13. The regional governor shall provide coordination of national and local

interests in the field of equality between women and men and shall cooperate with the bodies of local self-government and the local administration.

Art. 14. The National Strategy for Equality between Women and Men shall be the main programming document and shall contain:

1. The objectives for achieving equality between women and men in all areas;
2. The bodies responsible for achieving the objectives;
3. Measures to achieve the objectives;
4. Performance indicators.

Art. 15. The National Strategy shall be implemented through plans including the activities, the responsible bodies, the financial resources and the performance indicators for the activities.

Art. 16. (1) The temporary encouraging measures under art. 3, it. 2 shall be laid down in the implementation plans of the National Strategy for Equality between Women and Men.

(2) The encouraging measures shall be applied by the bodies of the executive branch for a specified period until their objectives for balanced representation, equal opportunities and equality between women and men in the areas where inequalities have been identified are achieved.

(3) The encouraging measures shall be financed from the national and the municipal budgets as well as from international and European sources.

Art. 17. (1) The Minister of Labour and Social Policy shall establish insignia for significant achievements in the effective implementation of the policy for equality between women and men.

(2) The Minister of Labour and Social Policy shall approve terms and procedure for award of the insignia, in coordination with the National Council on Equality between Women and Men.

Additional Provisions

§ 1. In the meaning of this Act:

1. "Equality between women and man" shall mean that women and men are free to develop their personal abilities and make choices without the restrictions of the social role of their gender; that the different behaviour, strives and needs of women and men are taken into account and are equally valued and encouraged; it shall mean equal rights and obligations, equal opportunities for fulfilment and for overcoming the barriers in all areas of social life.

2. "Equal opportunities" shall mean creating conditions for the realisation of equal chances and providing guarantees for access to all spheres of social life and for achieving personal and professional fulfilment and development.

3. "Balanced representation of women and men" shall mean the distribution of positions between women and men in power and decision making in all areas of life. It is an important condition for gender equality. Balanced representation shall mean ensuring quantitative and qualitative balance in the participation of women and men in politics, government and decision making.

4. "Integrating the equality of men and women" shall be the process of reflecting the issues of equality between men and women in all national, regional and local policies, strategies, programmes, plans, legislation and decision making processes in any

area and at all levels so that analysis of their impact on the situation of women and men is carried out at any stage and level of their development and implementation with a view to taking the necessary steps to achieve actual equality.

5. "Gender-based impact assessment" shall be an element of the social assessment and shall include impact assessment of all policy and legislative proposals regarding the situation of women and men so that the implementation of the proposals ensures neutralisation of the discriminatory effects and promotion of gender equality.

6. "Temporary encouraging measures" shall mean justified and proportionate initiatives of a temporary nature which are aimed at removing the barriers to the balanced representation of women and men, the disadvantaged position of the members of one sex or the disadvantaged sex.

7. "Horizontal cross-sectoral approach" shall mean applying common understanding of complex problems, building consensus for solving them, jointly defining and identifying the objectives and tools for measuring the progress in achieving them, coordinating the implementation of the measures taken and monitoring the policy for equality of women and men at all levels of decision making.

Transitional and Final Provisions

§ 1. Designation of officers pursuant to art. 8 shall be carried our within six months after the Act takes effect.

§ 2. Within 6 months after this Act takes effect, the Council of Ministers shall, on the basis of the proposal of the Minister of Labour and Social Policy, approve Rules on the structure and procedure of the National Council on Equality between Women and Man pursuant to this Act.

§ 3. The implementation of this act shall be entrusted to the Minister of Labour and Social Policy.

Decisions in equal pay for work of equal value cases

Decision No. 14026 / 24.11.2014 of SAC in administrative case No. 5334/2014, VII Division, reporting judge Daniela Mavrodieva
art. 243, para. 1 LC
art. 4, para. 2 PDA
art. 14, para. 1 PDA
There are two criteria for equal pay under art. 14, part. 1 PDA and art. 243, para. 1 LC: a / for equal work, "equal work" meaning the work carried out by different parties but with workforce of the same quality /training, skills, dexterity and mental and physical abilities, etc./ and b / for work of equal value.
Work of equal value is the work done by different parties having workforce different in terms of its profile who carry out work of different nature but the work done by them has equal value and utility. The work of equal value is different in nature but with the same value of the workforce, i.e. it is work which despite of its different nature is of the same value as the work of other nature, regardless of who does the work. The equal value is determined by the equivalent educational qualification, duration of the workforce consumed, productivity and conditions under which the work is done. In other words, in the work of equal value the work done is different but the analysis of the compared positions shows that in terms of skills, responsibilities, required qualification, efforts for carrying our the work and the conditions of work those positions are equivalent.
In the absence of an employer-defined algorithm for calculating the value of the work done by the employees and in the absence of a minimum amount of the basic wage for

each position, the established minimum social security threshold for the respective position could serve as a benchmark for determining the value of the work done.
Regardless of the freedom to negotiate the wage, the employer can not ignore the principle of equal pay under art. 243 LC reproduced in the provision of art. 14 PDA.
Proceedings are under art. 208 et seq. of the Administrative Procedure Code (APC).
They are initiated on cassation appeal filed by Stanka Borisova Valkova against decision No. 1121 / 26.02.2014 in administrative case No. 10000/2013 on the docket of Sofia City Administrative Court repealing decision No. 220 / 18.09.2013 of the Commission for Protection against Discrimination (CPD), issued on file No. 43/2012 in the part which: 1. establishes that in respect of Stanka Borisova Valkova, in the period from 7.04.2011 till the enactment of the decision, the employer IHB Electric AD failed to fulfil an obligation arising from art. 14, para. 1 of PDA by failing to provide equal pay for equal work of equal value and committed unfavourable treatment in the meaning of § 1, it. 7 of the Additional Provisions of PDA, in relation to art. 4, para. 1 of PDA, in respect of the element "personal situation", said unfavourable treatment representing direct discrimination in the meaning of art. 4, para. 2 of PDA; 2. establishes that in respect of Stanka Borisova Valkova the employer IHB Electric AD by failing to provide equal pay for equal work of equal value at a similar position and assigned similar employment obligations, namely for the position "Quality Controller" in the Quality Control Department, compared to her other colleagues holding the position "Quality Specialist" and "Technical Control Specialist" in the period from 7.04.2011 until the enactment of the decision, failed to fulfil the obligation under art. 14, para. 1 / PDA and committed administrative violation under art. 80, para. 2, in relation to para. 1 of PDA; 3 imposes on the grounds of art. 80, para. 2 in relation to para. 1 of PDA on IHB Electric AD financial sanction at 1000 BGN; 4. imposes on the grounds of art. 76, para. 1, it. 1 of PDA on IHB Electric AD compulsory administrative measures with a view to stopping the the violation under art. 14, para. 1 PDA and removing its harmful consequences, prescribing to it to prepare clear instructions for compliance with PDA and make them known to the inferiors, to refrain in the future from such discriminatory acts and to prevent unequal treatment based on the elements under art. 4, para. 1 of PDA.; 5. gives on the grounds of art. 67, para. 2 of PDA to IHB Electric AD 30 day period to take measures for fulfilment of the prescriptions given in the decision and to notify CPD of the fulfilment thereof.
The cassation appeal relies on the arguments that the decision is wrong and unlawful on account of being enacted in violation of the material and procedural law – cassation grounds under art. 209, it. 3 APC. Revoking of the decision is requested.
The defendant in the cassation appeal CPD, through its procedural representative, in a court session considers the appeal founded.
The opposing party IHB Electric AD contests the cassation appeal in a written answer to the court.
The defendant parties Valentin Klimentov Filipov and Mihail Stoyanov Dragiev – executive directors and representatives of IHB Electric AD do not give opinion on the appeal.
The representative of the Supreme Administrative Prosecutor's Office gives opinion that the cassation appeal is unfounded.
The Supreme Administrative Court, Division VII, finds the cassation appeal procedurally allowable as being filed within the period under art. 211, para. 1 of APC by the proper party participating in the first instance proceedings and having the right and interest in the appealing. Examined in substance the appeal is founded.

The contested decision repeals decision No. 220 / 18.09.2013 of the Commission for Protection against Discrimination (CPD) enacted on file No. 43/2012, in the part which: 1. establishes that in respect of Stanka Borisova Valkova, in the period from 7.04.2011 till the enactment of the decision, the employer IHB Electric AD failed to fulfil an obligation arising from art. 14, para. 1 of PDA by failing to provide equal pay for equal work of equal value and committed unfavourable treatment in the meaning of § 1, it. 7 of the Additional Provisions of PDA, in relation to art. 4, para. 1 of PDA, in respect of the element "personal situation", said unfavourable treatment representing direct discrimination in the meaning of art. 4, para. 2 of PDA; 2. establishes that in respect of Stanka Borisova Valkova the employer IHB Electric AD by failing to provide equal pay for equal work of equal value at a similar position and assigned similar employment obligations, namely for the position "Quality Controller" in the Quality Control Department, compared to her other colleagues holding the position "Quality Specialist" and "Technical Control Specialist" in the period from 7.04.2011 till the enactment of the decision, failed to fulfil the obligation under art. 14, para. 1 / PDA and committed administrative violation under art. 80, para. 2, in relation to para. 1 of PDA; 3 imposes on the grounds of art. 80, para. 2 in relation to para. 1 of PDA on IHB Electric AD financial sanction at 1000 BGN; 4. imposes on the grounds of art. 76, para. 1, it. 1 of PDA on IHB Electric AD compulsory administrative measures with a view to stopping the the violation under art. 14, para. 1 PDA and removing its harmful consequences, prescribing to it to prepare clear instructions for compliance with PDA and make them known to the inferiors, to refrain in the future from such discriminatory acts and to prevent unequal treatment based on the elements under art. 4, para. 1 of PDA.; 5. gives on the grounds of art. 67, para. 2 of PDA to IHB Electric AD 30 day period to take measures for fulfilment of the prescriptions given in the decision and to notify CPD of the fulfilment thereof.

To deliver this result, the court stated its legal arguments in accordance with the established data and held that the contested decision was issued by the competent authority in the statutory form, but in violation of the law. The Court held that the Commission had correctly determined the defensible element under art. 4, para. 2 PDA., which in this case was the element "personal situation". According to the court every citizen has the right to protection, which means that he is entitled to exercise this right at his discretion with no consequences other than the envisaged ones occurring for him from this fact. The fundamental right to protection is an intrinsic characteristic of the legal status of every citizen from the moment of his birth to his death and its exercise is a guarantee of his other rights which means that the exercise of the universal subjective right to protection is inherently an element of the personality which is relevant in all spheres and can be the content of the protected element "personal situation". Despite the presence of a protectable element, ACSC held that in this case there was no unequal treatment and in particular breach of the provision of art. 14, para. 1 PDA. After an analysis of the job descriptions presented in the case, the court came to the conclusion that the other employees in the department and Stanka Borisova Valkova did not do equal work or work of equal value in the meaning of art. 14 PDA. According to the court the salary determined for Valkova salary is based on criteria objectively established in the Rules for the organization of salaries and wages of the company, therefore it can not be accepted that there is unfavourable treatment. Determining a lower rate of pay than that for her other colleagues in the department due to the difference of the type of work is due to the different work done and, accordingly the complexity of the assigned obligations, having in mind the difference in the job descriptions. Guided by this

motives, the court held that the provision of art. 14, para. 1 PDA was not violated and revoked the decision in the appealed part.
The decision issued is wrong.
The Protection against Discrimination Act aims at establishing and penalising any placement into disadvantage according to the elements listed in the provision of art. 4, para. 1 of PDA or on any other grounds established by law or by an international treaty to which Bulgaria is a party. Direct discrimination in the meaning of art. 4, para. 2 of PDA is any less favourable treatment of a person on the grounds listed in para. 1, including citizenship, nationality, belonging to an ethnic group, disability, sex, race, social and public status, etc., than the treatment another person is receiving, received or would receive in comparable similar circumstances. Indirect discrimination shall be putting a person, on the grounds referred to in Paragraph (1), in a less favourable position compared to other persons through an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice is objectively justified in view of a legal aim and the means of achieving this aim are appropriate and necessary .
Chapter Two, Section I of PDA introduces anti-discrimination rules for protection of employees in the exercise of their right to work which rules impute direct obligations to the employer connected with: ensuring equal working conditions; equal pay for equal work or work of equal value; ensuring equal opportunities for vocational training and improvement of the professional qualification and requalification, as well as for professional development and promotion in position or rank, by applying equal criteria in the assessment of their performance, etc. Evident from the provision of art. 14, para. 3 of PDA, the assessment criteria in determining the labour remuneration and the assessment of work performance are equal for all employees and are determined by collective labour agreements or by internal rules on wages, or by the statutory terms and procedure of certifying state administration employees with no reference to the grounds under art. 4, para. 1 of the same Act. There are two criteria for equal pay under art. 14, para. 1 PDA and art. 243, para. 1 of LC: a/ for equal work. “Equal work” meaning the work carried out by different parties but with workforce of the same quality /training, skills, dexterity and mental and physical abilities, etc./ and b / for work of equal value. Work of equal value is the work done by different parties having workforce different in terms of its profile who carry out work of different nature but the work done by them has equal value and utility. The work of equal value is different in nature but with the same value of the workforce, i.e. it is work which despite of its different nature is of the same value as the work of other nature, regardless of who does the work. The equal value is determined by the equivalent educational qualification, duration of the workforce consumed, productivity and conditions under which the work is done. In other words, in the work of equal value the work done is different but the analysis of the compared positions shows that in terms of skills, responsibilities, required qualification, efforts for carrying our the work and the conditions of work those positions are equivalent.
In the absence of an employer-defined algorithm for calculating the value of the work done by the employees and in the absence of a minimum amount of the basic wage for each position, the established minimum social security threshold for the respective position could serve as a benchmark for determining the value of the work done.
Regardless of the freedom to negotiate the wage, the employer can not ignore the principle of equal pay under art. 243 LC reproduced in the provision of art. 14 PDA. In this case the administrative court wrongly held that the pay of Valkova is aligned with the objective criteria laid down in the internal rules for organisation of wages. First, the administrative court wrongly compared the job description for the position of “quality controller” from 2007 with the other job descriptions in the department. The job

description cited was not delivered to the cassator. The obligations of the employee arise from his/her employment contract and the job description delivered to him/her. The latest job description delivered to the employee is from 2001. CPD rightfully compared this job description to the others. The comparison of this job description with the other job descriptions in the department establishes that the obligations of Valkova under her job description are largely (13 of the obligations) overlapping with those of Antoaneta Kirilova – "quality control specialist for entry and exit control". It is true that Kirilova has two additional obligations and her job requires higher education whereas the job of the cassator requires specialised secondary education, but Valkova also has additional obligations in her job description which are different from those of Kirilova. Similar is the situation when comparing the job description of Valkova with the other positions in the department – "quality control specialist" and "technical control specialist". Certainly there is no full overlapping of the obligations and responsibilities, but not only the other employees, Valkova also has additional duties and responsibilities. According to the establishment plan of 01.01.2012, the basic monthly salary of Kirilova is 630 BGN, of Rumyana Ivanova - 850 BGN, the highest salary in the department is 1,000 BGN, the lowest - 270 BGN /the minimum salary/ allocated to Valkova. Only Valkova in the department is determined basic salary below the established social security minimum for the respective position – 420 BGN; the others have salaries above the social security minimum. The next in amount salary in the department /higher than Valkova's/ is 600 BGN for the position "facilities testing mechanic" which also requires specialised secondary education, The social security minimum for this position is 420 BGN, i.e., it is equal to Valkova's social security minimum. Out of 225 employees in the enterprise, only those in the position of "cleaners" have basic salary of 270 BGN, the social security minimum for the position is 270 BGN, one of the two employees has primary and the other secondary education. According to the establishment plan of 07.04.2011, Stanka Valkova is awarded basic salary of 240 BGN. A comparison with the other employees in the department shows that the lowest salary is 600 BGN for a position requiring secondary education and the highest salary is 850 BGN. Out of 225 positions in the enterprise, the only other position with basic salary of 240 BGN is the position of "cleaner". Evident from the establishment plan of 01.01.2011, the minimum salary in the Quality Control Department is 400 BGN for a position requiring specialised secondary education and the maximum salary is 850 BGN. The only employee in the enterprise having basic salary of 240 BGN is Dimitrinka Slatinska holding the position of "cleaner".

It is undisputed in the case that the basic salary awarded to Valkova is below the social security minimum for the respective position. Undisputed is also the fact that the employer has violated the provision of art. 22, para. 3, it. 3 of the Ordinance on the structure and organisation of wage according to which the internal wage rules include as a must minimum values or ranges of the basic salaries by position level. Undisputed is also that the employer has failed to determine an algorithm for setting the minimum wage for each position (for calculating the value of the work done for each position) on the basis of the approved criteria – complexity, responsibility of work, and environmental parameters. With the existing extremely big difference between the amount of Valkova's basic salary and the basic salaries of the other employees in the department the burden of proving that the principle set out in art. 14, para. 1 PDA is not violated lies with the employer (in view of the provision of art. 9 PDA). In this case the employer has failed to produce evidence about the actual value of the work done by Valkova (there is absence of an algorithm for setting the basic salaries, the employer has failed to set the minimums or ranges of the basic salaries for the respective position

levels, has gone below the social security minimum for the respective position). Therefore in this case it should be accepted that there is no reasonable justification of the big difference between the pay of Valkova and the pay of the other employees in the department and this in turns justifies the conclusion that the employer has committed violation under art. 14, para. 1 PDA.
It is true that the social security minimum is not binding for the employer in determining the basic wage, but it could serve as a benchmark for the approximate value of the particular work, insofar as the employer has not determined another method, mechanism or algorithm for calculating the value of the respective work. Not without relevance is also the fact that the only other employees in the enterprise having basic salary of 240 BGN /for 2011/, respectively 270 BGN /for 2012/ are those holding the position of "cleaner" – the one is with primary and the other is with secondary education. Undisputed is also the fact that the work done by employees holding the position of "cleaner" is one of the most unskilled and, respectively one of the lowest paid category of work and this generally determines it as work of the lowest value. It is not by chance that the social security minimum for this position is in an amount equal to the minimum wage. The above considerations lead to the conclusion that the work done by an employee holding the position of "cleaner" is not and could not be equivalent to the work done by Valkova who holds the position of "quality controller – entry and exit control". When persons who obviously do unequivalent work receive equal pay, it should be accepted that in respect of the person whose work is of higher value the principle regulated in art. 14, para. 1 PDA is violated.
Therefore, arriving at the conclusion that in this case the principle of ensuring equal pay for equal or equivalent work regulated in art. 14, para. 1 PDA and repealing the appealed administrative act, ACSC has issued its decision in violation of the material law.
In the light of the foregoing, the decision issued by the court of first instance should be repealed as wrong and another one should be issued on the merit of the dispute whereby the appeal of IHB Electric AD against decision No. 220 / 18.09.2013 of the Commission for Protection against Discrimination issued on file No. 43/2012 on the docket of CPD should be rejected.
Guided by the above motives and on the grounds of art. 221, para. 2, second sentence of APC, the Supreme Administrative Court, Division VII,

HAS ADOPTED THE FOLLOWING DECISION:
Decision No. 1121 / 26.02.2014 in administrative case No. 10000/2013 on the docket of the Administrative Court of Sofia City is hereby REVOKED and the following is ruled instead
The appeal of IHB Electric AD against decision No. 220 / 18.09.2013 of the Commission for Protection against Discrimination issued under file No. 43/2012 on the docket of CPD is hereby REJECTED.
The decision is final.

Decision No. 315 / 10.01.2014 of SAC in administrative case No. 9463/2013, Division VII, reporting judge Pavlina Naydenova
art. 52, para. 1,
art. 14, para. 1,
art. 80 PDA
Proceedings are under art. 208 et seq. of the Administrative Procedure Code (APC).
They are instituted on appeal filed by Hristina Vladimirova Angelova against decision No. 3010 / 07.05.2013 in administrative case No. 367/2012 of the Administrative Court

of Sofia City repealing decision No. 202 / 25.11.2011 of the Commission for Protection against Discrimination (CPD).
The appellant does not give specifics grounds for wrongfulness of the decision.
Presented are a written answer to the appeal by the headmaster of 102 Panayot Volov School, Sofia and written notes by Yordanka Pavlova.
The prosecutor concludes that the appeal is unfounded.
The Supreme Administrative Court, Division VII, finds the appeal procedurally admissible and filed within the period under art. 211, para. 1 APC.
Examined on the merits, the appeal is unfounded.
The proceedings at CPD are instituted on an appeal by Hristina Vladimirova Angelova filed within the period under art. 52, para. 1 of PDA containing complaints against unequal treatment compared to the teacher of arts Veselin Tomov Davidkov consisting in setting lower pay for equal and equivalent work. CPD took for established that Hristina Vladimirova Angelova was employed with a standard of 400 hours and basic monthly pay of 255 BGN, /later 278 BGN/, with length of service 22 years and 05 months and the list of the pedagogical staff presented in the file shows that Veselin Tomov Davidkov – teacher of arts in 102 Panayot Volov School, Sofia was employed with a standard of 400, basic monthly pay of BGN 420 and length of service 11 years and 04 months.
The commission has accepted that in view of the established different pay, in this case there is violation of the principle of equal pay/treatment laid down in art. 14 of PDA in respect of the appellant. It is pointed out that no attestations or other documents certifying that assessment of the work of the employees in 102 Panayot Volov School, Sofia has been made are produced. It is not proven in this way or otherwise that Hristina Angelova has committed omissions or other disciplinary violations in exercising her employment relations with her employer serving him as a basis to assess differently Angelova's work contribution and that of the other teachers with the same standard of 400 hours (in this case Veselin Tomov Davidkov. Therefore, it is assumed that the employer has not fulfilled its obligation under art. 14, para. 1 of the PDA to ensure equal pay for equal work, which is an administrative offense within the meaning of art. 80 of the PDA.
CPD accepted the following: 1/it established direct discrimination based on sex, committed by 102 Panayot Volov School, Sofia, represented by the former headmaster and the present headmaster, in respect of Hristina Vladimirova Angelova; 2/it established that the former headmaster and the present headmaster violated the right of Hristina Vladimirova Angelova under art. 14 of PDA; 3/imposed on the grounds of art. 78, para. 1 and art. 80, para. 3 of PDA fines in an amount of BGN 400 separately to the former headmaster and the present headmaster; 4/imposed on the grounds of art. 80, para. 2 of PDA financial sanction in an amount of 500 BGN on the headmaster of 102 Panayot Volov School.
To annul the contested act, the court reasoning that the minimum basic salary for a senior teacher from 01.01.2010 is 483 BGN under Annex No. 2 to Regulation No. 1 of 04.01.2010 on wages and according to art. 4, para. 4 of Regulation No. 1 in case of a lower individual rate the basic salary is reduced in proportion to the standard. Evident from the statement presented by the school Hristina Angelova Vladimirova worked at a rate of 0.6 norm - hence the minimum wage should be 289.80 BGN, (483 x 0.6 = 289.80 BGN) instead of the salary of 275 BGN specified in the contract. In itself this discrepancy is not enough to justify discriminatory treatment on the part of the headmaster.

As comparable circumstances are examined the subjects and disciplines taught at the same minimum mandatory standard under it. 5.3 of Annex No. 1 to Regulation No. 3 of 18.02.2008 for which the school teachers are appointed at reduced norm - in this case the hours for rehearsal with a piano and the hours of art classes. According to the presented statement, as rehearsal pianists with norm of 0.5 are appointed Petyo Kostadinov Petrov and Galya Petrova Haralambieva, each with a salary of 242 BGN. Their salaries conform to Regulation No. 1, and therefore they were not discussed by the CPD. However, while CPD justified a conclusion about unfavourable treatment based on gender, the remuneration of the rehearsal pianist Petyo Kostadinov Petrov suggests the opposite. With incomplete norm 0.6 of Fine Arts was appointed Veselin Tomov Davidkov with a salary of 420 BGN under an additional agreement of 10.03.2010.
Under these facts it is correctly accepted by the court, that the conclusion of CPD for committed direct discrimination based on sex in respect of Hristina Vladimirova Angelova is unfounded. It was found that Petyo Kostadinov Petrov received the same remuneration under the same conditions. Indeed, there are no established facts from which to infer that discrimination is made on the grounds of "sex" and therefore the Decision of CPD is rightfully cancelled.
As regards the application of art. 14 of the PDA under which the employer shall provide equal pay for equal work, the CPD has indicated in the rationale of the Decision that there was no evidence of the results achieved and of the contribution of Angelova and Davidkov and on that basis CPD justified the conclusion that the lower basic pay violates Angelova's right to work. The Court accepted that this conclusion was unlawful. The results achieved by the work of the teaching staff are important for determining the additional remuneration under Section IV of Regulation No. 1 of 04.01.2010, whereas such additional remuneration was not determined for Davidkov or for Angelova. The absence of attestation under Annex 2 to art. 12 of Regulation No. 1 in this case has no legal relevance.
The conclusions of the court that the school can refer to breaches in the work of the applicant before the committee to justify lower pay without making attestation providing a basis for setting lower pay is wrong. However, the final conclusion of no violation of art. 14 of the PDA is correct. The Court has made comparison with similar cases in the pay of school teachers appointed under reduced norm and has found that their remuneration is the same as that of the complainant to the Commission and complies with Regulation No. 1. In this situation, the fact that Davidkov is employed with a higher salary is an exception and does not give grounds to assume that Angelova given unequal treatment.
The cassation appeal presents only fact but contains no reasons for wrongfulness of the decision. No grounds for cassation are established by the official verification under art. 218, para. 2 APC. Complainant's objections are connected with failure to make adjustments to the basic salary, of the pay for length of service, and failure to make payment of additional amounts for "senior teacher". Such findings are not made by CPD and they cannot be produced as new grounds of discrimination in the cassation proceedings.
Guided by the foregoing, the Supreme Administrative Court, Division VII,

HAS ADOPTED THE FOLLOWING DECISION:
Decision No. 3010 / 07.05.2013 in administrative case No. 367/2012 of the Administrative Court of Sofia City is hereby UPHELD.
The decision is not appealable.

Decisions of CPD in cases concerning discrimination based on gender, where verification and collection of information is carried out by EA General Labour Inspectorate (GLI)
DECISION
No. 276
Sofia, 20.12.2012
Commission for Protection against Discrimination of the Republic of Bulgaria - Second Specialized Panel established by Order No. 447 / 06.08.2012 of CPD Chairman consisting of the following members:

CHAIRMAN: ……
Ivailo Savov
MEMBERS:…….
Kemal Eyup,
……..
Sofia Yovcheva,

Have heard the report of Kemal Eyup Case No. 320/2011 on the inventory of the Commission for Protection against Discrimination and to rule on it has considered the following:
The proceedings are under Section I of Chapter four of the Protection Against Discrimination Act
The proceedings on case No. 320/2011 was initiated by Injunction 786 / 17.11.2011 of the President of the Commission for Protection against Discrimination (CPD) on complaint registered No. 44-00-3852 / 03.11.2011 and to supplement it with file No. 44-00-87 / 10.01.2011 made by A.I.A., village V, district P.
In view of the circumstances leading to the argument of discrimination on grounds of "gender" appeal was allocated to the Second Specialized Permanent Panel. The complaint was lodged on the grounds of art. 50, it 1 of PADA, meets the requirements of art. 51, par. 1 and par. 2 of PADA and constitutes a suitable legal basis for instituting proceedings.
The appellant – A.I. A. complained that she applied for a vacancy of "Express document- express translations" EOOD (published on the website of jobs.bg KRISI -T-90 EOOD), which dealt with preparation of documents for job applications in Ireland. A.A. allegedly been trained in that company from 24.10.2011 to 27.10.2011. She submits that J. U., representing the company, presented her an employment contract, which set the following clause: ".In case of conception of worker (clerk) after starting work, she owes the employer penalty of BGN 700".

According to A.A, this provision was not only in contradiction with the laws of the Republic of Bulgaria, but it is also discrimination against all women. She points out that in the company managed by J. W. the employees were only women whose "human rights were violated and oppressed." According to the appellant such a contract is envisioned to all approved would-be employees of the company.

On 10.01.2012 A.A. makes adjustments to the filed complaint additionally filed under No. 44-00-87 by the same date. She specifies that she "found out" the name of the company in which the employees had signed contracts with such a clause, namely "Express Translation- an express translation agency" EOOD. This information she obtained in conversation with a former employee of the company, without citing a

particular name.

She also added that the names of employees who have signed employment contracts containing such a clause are: P.K. and D.H.
She asked the Commission to initiate proceedings and rule according to their powers.
This panel finds that the appellant meets the requirements of art. 51, para. 1 of PADA and constitute suitable legal grounds to initiate proceedings.
Second Permanent panel of CPD constituted upon parties to the proceedings:

1. Appellant - A.I.A., with address for summons: village, "D. D." Str. No.* Municipality M., District. P;

2. Defendants:

2.1. "Express Translations - an express translation agency" EOOD, registered in the Commercial Register at the Registry Agency, EIK *, with its registered office at: P., area TS. Street. "R. D." No. * Represented by J.S.U.

2.2. J.S.U. representing "Express Translations - an express translation agency" EOOD, with its registered office at:. P., Street "R.D." No. *

2.3. "Express Documents - express documents translations" EOOD, registered in the Commercial Register at the Registry Agency, EIK *, with its registered office at: P., area TS. Street. "R. D." No. * Represented by J.S.U.

2.4 J.S.U. representing ""Express Document - express documents translations" EOOD, with its registered office at: P., area TS. Street. "R. D." No. *

The examination on the case was under art. 55-59 of the Protection Against Discrimination Act.

Information and evidence was requested from third parties involved in the proceedings, namely the Executive Agency General Labour Inspectorate (EA GLI), Directorate "Labour Inspectorate" – town P. and the National Revenue Agency (NRA), the Territorial Directorate - P.
The information obtained from GLI EA, Directorate "Labour Inspectorate" – town P. is filed under No. 16-19-21 / 03.02.2012, in CPD register. To the letter of GLI EA Directorate "Labour Inspectorate" – town P. are attached certified copies of employment contracts of employees in the above two companies.

By letter under No. 16-14-8 / 31.01.2012 from CPD a response from the NRA Territorial Directorate - P. was registered, on all contracts containing in the information system of the revenue authority for companies: "Express Translations – express translation agency "EOOD. And "Express Document - Express translations of documents "EOOD. Certified copies of notifications art. 62, para. 4 of the Labour Code of the aforementioned companies for the registration of contracts are attached to the letter.
An open hearing on the case was held on 26.09.2012.
The appellant A. A. duly summoned, did not appear to court and was not represented. Defendants are considered duly summoned under art. 50, para. 2 of the CPC

Summoning the parties to proceedings before the Commission is governed by the provision of art. 60, par. 2 of PADA according to the quoted law rule summoning the parties and notification to interested parties shall be made under the Civil Procedure Code. In the case of summoning the defendants is specified in the Commercial Register - headquarters and headquarters company, which is identical for both companies, namely: town P. Street "R. D." No. *.
Second Specialized Permanent Panel considered the case to clarify the factual and legal

documents with protocol decision of the same date and was scheduled for judgment.

From those materials and evidence presented in the case the following facts are established:
A.A. suggests that her personal rights are violated. Her main complaint is that the person representing employer ("Express Documents - express translations of documents" EOOD) offered her to sign an employment contract. According to the applicant's assertions, the contract contained a penalty clause agreed in favour of the employer in the amount of BGN 700 in the event that the employee became pregnant. Specific evidence of these allegations has not been attached.

Firstly, she indicates that she applied for employment in "Express Documents" EOOD, after having undergone short training.
Secondly, she claims that in a conversation with a person who is not specified A. found out from a former employee that "the name of the company, which she has signed an employment contract is" Express Translation – an express translation agency "while in her report A. stated the company - "Express document- express translations of documents."

The Panel consider it necessary to recognize that among those in the original nomination document and in addition to the application submitted, there are inconsistencies in the appellant's allegations.
As evidence in support of her allegations A.A. attached only a photocopy of the form of employment contract, which actually contains a clause cited, but it is a form: the employer, its headquarters and management are not mentioned, the contract is not shaped with relevant details - signature and stamp, in order to be accepted as prima facie evidence. In support of her claims A. only shows the names of the persons who according to her signed the employment contract containing the clause in question: P.K. and D.H.
The Panel consider that in this case the presented contract cannot be considered as evidence supporting the allegations in the complaint.
In the course of the investigation by letter ref. No. 16-19-5 / 10.01.2012 from CPD, the Executive Agency "General Labour Inspectorate" - Directorate "Labour Inspectorate" town P. is required an unplanned inspection to be jointly carried out in order to establish the facts and circumstances related to the employment of employees in the "Express Translations – express translation agency" EOOD and "Express Document - express translation of documents" EOOD.

By letter No. 16-19-21 / 03.02.2012 of Labour Inspection employment contracts of the employees of the companies concerned are presented. The employment contract concluded on 10.10.2011 between “Express Translations – express translation agency" EOOD represented by J. U. on the one hand and D. C. H. on the other hand is attached to the file. Evidenced by the contents of the attached contract, it contains no clause invoked by the appellant.
Next in the response of the Labour Inspectorate it is reflected that there was no written data P.K. to have worked in one of the two companies. An employment contract concluded on 10.10.2011 between “Express Translation – express translation agency" EOOD represented by J. U. on the one hand and D. C. H. on the other hand is attached to the file. As evident from the same contract, it does not contain the clause invoked by A.A. in the complaint.

By letter registered under 16-14-8 /31/01.2012 by the National Revenue Agency information and evidence is presented on companies' “Express Translation – express translation agency" EOOD and "Express Document - express translations of documents" EOOD. There is updated information about persons for whom notifications have been sent under art. 62 of the Labour Code, for registration of labour contracts with the employer “Express Translation – express translation agency" is given
Information is provided to the person D. C. H., which reflects that there is notification by art. 62, par. 5 from LC for registration of a contract of employment with the above employer.

NRA also provided information about the employer - "Express Document - express translations of documents”, including roll indication of the employees of both companies, with the date of conclusion of the employment contract, date of last supplementary agreement and the date of termination of the employment contract.
The Commission for Protection against Discrimination rule on allegations exercised directly or indirectly unequal treatment of specific individuals, set in accordance with the special law purposes. It has no power to rule on unspecified signals and formulaic requests for verification of officials, state bodies and institutions.
By definition, discrimination constitutes a statutory inequality, destruction or underestimation of citizens according to their nationality, race, gender, religion, ethnicity, human genome, citizenship, origin, religion or faith, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status or any other grounds established by law or international treaty to which Bulgaria is a party. According to art. 4, par. 2 of PADA direct discrimination is any less favourable treatment of a person on the grounds under par. 1 rather than treated, has been treated or would be treated in comparable circumstances. In case the appellant's allegations were too general, on the other hand A.A. repeatedly stated that concrete facts and circumstances were " found out " in a conversation with a third party, which in turn, the Chamber cannot accept as credible information.

Second Specialized Panel, having carefully reviewed and considered the complaints in the appeal and the requests to the Commission, consider it necessary to point out that proceedings for Protection against discrimination is opened based on regular appeal or signal, which should meet the regularity requirements laid down in the provision of art. 51, par. 2 of PADA as well as the eligibility requirements, specified in special laws and APC.
Regardless of the fulfilment of the formal requirements referred to in the norm of art. 51, par. 2 of PADA, Second Specialized Panel consider that the submitted initiative document, which has served as the basis for initiating proceedings, no specific facts or circumstances are referred to from which justified conclusion can be made that there is discrimination and which in turn should entail liability to the defendant to prove that the right to equal treatment is not infringed.

The specific thing in the proceedings of Protection against discrimination under the rules of art. 9 PADA is that after the party, who claims to be a victim of discrimination, proves facts from which it may be inferred that there has been discrimination, the defendant should prove that the right to equal treatment is not infringed.

Under art. 9 of PADA the determining authority in the proceedings for Protection against discrimination is given the opportunity to assess whether it can conclude that there is discrimination by some facts, do not establish with absolute

certainty the existence of discrimination, in order to accept that it is satisfied if the defendant party finds that the right to equal treatment is not violated. The victim should prove the discrimination and the existence of equal conditions for her, in comparison with which the defendant has committed a violation treating another person in the same conditions more favourably. After proving the allegations from which it may be presumed that there has been discrimination, the burden of proof is transferred to the other party. The defendant should prove that there are facts from which it may be concluded that there is no discrimination or that the actions taken are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The proof of the defendant should be complete, covering all the facts on which the victim is based and establish other facts to rebut the existence of the facts established by the appellant or to prove objective justification and proportionality of the manifested difference.

Analysis of the collected written evidence in the file shows that A.A. has not proved facts from which discrimination.

As a whole in the appeal alleging discrimination, as presented above by the appellant, there was no evidence to support them with a view to art. 9 of PADA, according to which the party alleging discrimination should present convincing facts and from which a conclusion can be made and only then the other party is obliged to prove that it did not make unequal treatment. The appellant in this case has not presented any evidence to support its stated allegations in the appeal.

Second Specialized Permanent Panel after considering the available documentary evidence declare that the facts mentioned in the appeal and some of which might otherwise form presumption of discrimination have not been proven and it cannot be assumed that they actually happened. The alleged discrimination on grounds of "gender" remains unproven and therefore appears to be unfounded. Based on these considerations, the appeal should be dismissed.

In view of the foregoing, pursuant art. 65, it. 5 of PADA, Second Specialized Permanent Panel of the Commission for Protection Against discrimination

HAS ADOPTED THE FOLLOWING DECISION:

It is hereby established that in terms of A.I.A. defendants: “Express Translation – express translation agency" EOOD, registered in the Commercial Register at the Registry Agency, EIK *, with its registered office at: town P. *, area W., Str. "R. D. ", No. * represented by J.S.U., as an individual and manager are not proved to have made violation of the prohibition of discrimination in art. 4 of PADA, in relation to art. 4 para. 1 and art. 4, par. 2 of PADA, on a protected attribute "gender".

It is hereby established that in terms of A.I.A. defendants: "Express Document - express translations of documents" EOOD, registered in the Commercial Register at the Registry Agency, EIK *, with its registered office at: town P. *, area W., Str. "R. D.", No. * represented by J.S.U., as an individual and manager it is not proved that have made violation of the prohibition of discrimination in art. 4 of PADA in relation to art. 4 para. 1 and art. 4, par. 2 of PADA, a protected attribute "gender" art. 4, para. 2 of PADA, on the basis of "gender".

Appeal. No. 44-00-3852 / 03.11.2011 and its supplement with No. 44-00-87 / 10.01.2011 submitted by A.I.A. from village V., Str."D. D.", No. * Municipality M.,

district P., IS HEREBY DISMISSED as unsubstantiated and unfounded.
The decision to be notified to the parties in the case.

The decision subject to appeal under the APC through the Commission for Protection against Discrimination before the Administrative Court - Sofia city within 14 days of notification to the parties.

CHAIRMAN:.....
/ Ivailo Savov /
MEMBERS:.....
/Kemal Eyup /
.....
/ Sofia Freedman /

Decisions of the CPD in cases concerning gender-based discrimination

DECISION
No. 212
Sofia 12.09.2013

Commission for Protection against Discrimination of the Republic of Bulgaria, Second Specialized Panel on art. 48, par. 3 of the Protection Against Discrimination Act , consisting of:

Chairman: .....…….….
Kemal Eyup
Rapporteur:……
Sofia Yovcheva
Member: ……..…….
Ivailo Savov

have considered the reported from Sofia Yovcheva case No. 109 according to the inventory of the Commission for Protection against Discrimination for 2012, and in order to decide has regarded the following:
The proceedings are under Section I of Chapter IV of the Protection Against Discrimination Act.
The proceedings on case No. 109/2012 was initiated on appeal registered. No. 44-00-1516 / 17/04/2012 submitted by P. I.M. from town. S. against S. J. K. - TS - director of "V.* "Ltd., town S.

The case was formed by Order No. 271 / 02.05.2012 of the Chairman of the CPD and in accordance to appeal about less favourable treatment on the grounds of "gender" and is allocated to *Second Permanent Specialized* Sitting *Panel* of CPD.
Based on a conducted survey pursuant to art. 59, par. 1 of PADA and art. 22 SPAIR it was established that the appeal meets the requirements of art. 51, par. 1 and par. 2 of PADA and constitutes a suitable legal basis for the proceedings.
The parties of the case are: P. I. M. address of the summoning: town S., h.c. M., bl. * entr. *, ap. * - appellant, J. K. C. - Ts. manager of "V. * "Ltd., with address of the summoning: town S., h.c. V. Str." * -vek ", No. * entr. * ap. * - defendant, "V. - *" at

address: town. V. Str." * -vek “, No. * entr. * ap. * represented by S. J. K. - Ts manager - defendant.

Factual according to the appeal:
P. M. stated in her application that she works as an employee in a company "V. * "EOOD. town S, run by S. K.-Ts. under a permanent contract from 28.02.2011 and since September 2011 until now, having regarded the filing of the appeal to the Commission, the company has not paid any remuneration. She states that she requested payment of at least part of the due remuneration from SK - Manager of "V. * "Ltd. for the period September 2011 to April 2012, pending her giving birth and maternity leave and in response she received threats as quoted:" ..... And do you want me to prepare your maternity leave documents properly?! " end of quotation.
Consequently, M. explains, she experienced emotional stress and in consultation with the attending physician, Dr. R. of CDC -XV, assessed real risk for premature pregnancy and was granted sick leave with a diagnosis of "false birth before 37 completed weeks of gestation / before-term threatening birth "/.

The appellant alleged that due to her illness, she was unable to personally deliver the sick note to the other party, but informed her employer – the manager of company K. on 10.04.2012 K. i.e. within the statutory two days of its issuance and delivered her sick note on 12.04.2012 personally to her employer, who gave her notice of termination of her employment on the same day, as in any refusal to sign it accordingly, would be given an order for dismissal due to absence from work.
The appellant stated that she had not been allowed by the defendant to leave the office until she signed the documents submitted to her.
In view of the foregoing, the appellant alleged that she felt discriminated as quote: "..... pregnant woman in poor health compared to other employees in the company." She considers that the attitude of K. is a threat to her health and pregnancy.

In a further letter No. 44-00-2186 / 04.06.2012 the appellant stated that during the described in the complaint circumstances there was no other people-witnesses that were present at the time. She states that it is possible to eventually have had witnessing colleagues, but they were not witnesses to the incident as they were in an adjacent room during the conversation between her and K. She expresses concern, however, that they would not testify because they have to receive unpaid salaries from the defendant for certain period.
She states that the Labour Inspectorate inspected the defendant company and has imposed appropriate sanctions.

She asks the Commission for Protection against Discrimination to establish whether there is discrimination against her on grounds of "gender" and associated with her pregnancy health problems in the circumstances and if it finds one, to order an injunction to establish a situation of equal treatment and to impose sanctions provided in the law or administrative measures. She submits written evidence.
The Commission after examining the appeal and the evidence they consider that it meets formal requirements of art. 51 of PADA, constitutes a suitable basis for the proceedings, there are no negative procedures in art. 52 of PADA, which would prevent the initiation of proceedings and examination of the appeal.
In pursuance of the powers conferred on it by law, the Commission carried out an examination procedure in accordance with art. 55 and following of PADA, in which it

has requested written submissions from the defendants.

In a written explanation No. 16-20-388 / 18.05.2012 from CPD, S. K. stated that the appeal of P. I. M. is unlawful, unfounded and not proved. She states that she did not conduct any direct or indirect discrimination against the appellant. She believes the appellant has not named a person to compare with, who was treated differently, more favourably.

As for the stated claims of the appellant, the manager of "V.- * "claims that she has not treated her less favourably than other employees in the company. In confirmation of which she states that she has never been involved in fieldwork and burdensome labour conditions and her obligations are confined to activities located in the office of the company. She gives her opinion that she was not informed by the appellant that she was pregnant at the time allowed by LC.
She says that even at the time of appellant's appointment at the company, she was informed that there were possible delays in the payment of wages due to financial difficulties. Furthermore, she stated that she was aware of the gender and the age of the appellant and in this respect the possibility of her giving birth.
In connection with the situation described by the appellant, the defendant states that on 06 04.2012 she was informed by M. that on 09.04.2012 she would be late for work due to scheduled appointment with a specialist doctor. She also asked her employer her remuneration to be paid immediately.

According to the defendant, on 09.04.2012 the appellant did not show up to work and phoned her employer. Only on the next day - 10.04.2012, she phoned and informed that she had a sick note issued. On 12.04.2012, the appellant appeared at the office of the company "in apparently good health" and presented a sick note. Then defendant gave her orders to give written explanations for not appearing at work in two consecutive working days and abusing the trust of the employer rather than order a disciplinary dismissal, as she claims. She refused to give written explanations and raised her voice.

Then, due to the current relationship between employer and employee, she offered her two options for completion of the employment relationship between them: first option – employment to be terminated on the basis of art. 326, par. 2 LC to one month's notice with effect from 06.04.2012, the contract will be terminated on the grounds of art. 328, par. 1, it. 3 of CL and a second option, dictated by refusal to give written explanations - an order for lawful dismissal.
The defendant states that there is another designer, appointed in the company, who has been on sick leave since the first day of her pregnancy without this being a problem.

She argues that employment and financial relationship between employer and employee in the company have never dictated her behaviour. She assures that she has always strived to maintain equality and respect for human and professional dignity of each employee, which can be confirmed by the company's employees. She defines as defamation the claims of the appellant about her remarks, detention, threats and characteristics made.
She confirms that not all monthly salaries are paid to anyone of the company, including her. This is due to the unfolding financial crisis and the obligations of outside companies to "V - *" LTD.
She submits written evidence.

In the course of the study and a public hearing held, written and verbal evidence was gathered.

In the circumstances, clarified, the Panel has established the factual and legal part as follows: appellant P.I.M. worked as an engineer for construction of buildings and facilities in "VETS- 94" Ltd under a contract of employment No. 23 / 28.02.2011.
According to the attached sick note for temporary disability with No. 1186492 of 11.04.2012 issued by Dr. R. - CDC-15 Ltd., S. str. "NG" * on the name of the appellant P. I. M., she was on sick leave from 09.04.2012 to 08.05.2012. - A total of thirty days.
According to the enclosed notice No. 001 / 06.04.2012, the manager of the "V.- *" Ltd. has made **under** art. 326, para. 2 LC from 06.04.2012 one month's notice of termination of the employment contract with the appellant. The notice says that her employment would be terminated on the virtue of art. 328, para. 1, item 3 of 28.02.2011. The notice was signed only by the employer, not by the appellant.
She was presented Order No. 001 / 11.04.2012 issued on the virtue of. art. 193, par. 1 and par. 3 of the Labour Code by the manager of "V .- *" LTD, which requested the appellant M. to give written explanations for not appearing in her workplace for two consecutive days within the meaning of art. 190, par. 1, it. 2 of LC of 09.04.2012 and 10.04.2012 and in relation to perceived abuse of the trust of the employer within the meaning of art. 190, par. 1, it. 4, sentence 1 of LC. There is no signature of the person who received the order and date of service.

Under the protocols submitted for check by the "Labour Inspectorate" which made an inspection of the observance of labour legislation by "V- *" Ltd. on 08.05.2012, 11.05.2012 and 16.05.2012.
During the examination, a review of submitted payroll was made and violations were found - unpaid salaries not only to appellant but also to other employees in the company for the period 2011 - 2012. Specifically about the appellant, the defendant company has not paid the salary for the month of September 2011, October 2011, December 2011, January 2012, February and March 2012 in violation of art. 128, it. 2 of LC.

Respectively, some prescriptions are given for a certain period to be performed. It is evident by this Protocol that defendant in this case has not paid salaries not only to the appellant but also to other employees at the defendant company.
The defendant submits in the case documentary evidence of the alleged claim of temporary financial difficulties that the company has.
At the open hearing the appellant, regularly notified, does not appear, the representative of the defendant supported the initially stated in a written opinion that, as regards the appellant there has been no discrimination on the basis of "gender" by the company and asks the Commission to dismiss her appeal as unproven.

Second Specialized Permanent Panel of the Commission for Protection against Discrimination, after considering all written and verbal evidence gathered in the course of these proceedings finds the applicant's claim of P.I.M., made against her discrimination based on gender in relation to her health, unfounded and rules her appeal to be dismissed. The Commission's reasoning for this is as follows: To establish discrimination in respect of a person under PADA it must establish that the person is treated less favourably on the basis of any of these signs in art. 4, par. 1 of PADA than being treated, it has been treated or would be treated in a comparable situation, or it is placed at a disadvantage compared with other persons by an apparently neutral provision, criterion or practice, unless that provision or practice is objectively acquitted

with a legitimate aim and the means of achieving that aim are appropriate and necessary. In this case it is not established that the appellant was treated less favourably than other colleagues because of her gender in relation to her pregnancy.

As it was stated the employer failed to pay salaries not only to the appellant, but also to other employees in the company, her colleagues. This fact proves that not only the applicant has been left without compensation for a past period, which in turn confirms that there is no discrimination.
Evidenced by the submitted protocol for inspection by the "Labour Inspectorate" S. some violations of labour law were established not only to the applicant, but also in relation to other employees in the company.

The Commission considers that a conflict arose between the two parties to the proceedings, in connection with unpaid salaries by the employer, in connection with the release on sick leave and sick leave issued to the applicant. There was verbal exchange on both sides, but the collected evidence does not establish any discrimination with respect to the applicant by her employer. In connection with the request of the employer for written explanations from appellant, this Panel is of the opinion that these actions in the case could not be described as discriminatory within the meaning of PADA, as it is a responsibility of the employer to ask the employee for written explanations when they consider that there is violation of labour discipline.

No evidence of less favourable treatment of the applicant in connection with her gender and her health was presented.
Taking into account and considering all the circumstances of the case and considering that the applicant is currently on maternity leave for child-caring, the Panel consider that no infringement of the applicant's rights under PADA was found.
Accordingly, after considering the above mentioned and taking into account PADA, Second Panel consider that in this case, regarding the appellant’s appeal, no discrimination was established by her employer.
Led by the above-mentioned and on the basis of art. 65 and following of PADA, Second Specialized Permanent Panel of the Commission for Protection against Discrimination

HAS ADOPTED THE FOLLOWING DECISION:

IT IS HEREBY ESTABLISHED that S. J.K. – TVs as manager of "V- *" Ltd. city S. with city address, city of Sofia, Blvd. "C." No. * has not committed discrimination on grounds of "gender" in exercising the right to work in terms of P.I. M. as employee at the same company.
IT IS HEREBY ESTABLISHED that ".V *" Ltd. S. with city address, city of Sofia, Blvd. "C." No. * represented by S J. K. - TVs manager has not committed discrimination on grounds of "gender" in exercising the right to work in terms of P.I.M. as employee at the same company.
The appeal registered with No. 44-00-1516 of 17.04.2012 on the docket of the Commission for Protection against Discrimination for 2012, submitted by P. I. M. against S. J. K. – Ts. manager of "V- *" Ltd. city S. with city address, city of Sofia, Blvd. "C." No.*, IS HEREBY DISMISSED as unproven.
The appeal registered with No. 44-00-1516 of 17.04.2012 on the docket of the Commission for Protection against Discrimination for 2012, submitted by P. I. M. against "V.- *" Ltd. S. city S. with city address, city of Sofia, Blvd. "C." No. *, IS HEREBY DISMISSED as unproven.

This decision should be sent to all parties to the proceedings.
The decision is subject to appeal within fourteen days of its receipt by each party before the Administrative Court of Sofia, through the Commission for Protection against Discrimination.

Chairman: .....
Kemal Eyup
Rapporteur: ....
Sofia Yovcheva
Member: .....
Ivailo Savov